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# Standing Committee on Environment and Sustainable Development

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Chair: Mr. Francis Scarpaleggia





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• (1305)

[*English*]

**The Chair (Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.)):** I call the meeting to order.

Welcome to the meeting I guess we've all been waiting for, which is clause-by-clause consideration of Bill S-5.

I'm told all the sound checks have been done and been done successfully.

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** I haven't had a sound check, Mr. Chair.

**The Chair:** Can we...?

You're good, apparently.

**Ms. Elizabeth May:** Excellent.

**The Chair:** We have with us, from the Department of Health, Greg Carreau, director general, safe environments directorate.

From the Department of the Environment, we have Mr. John Moffet, who we know very well and has been very useful to this committee on a number of subjects. He's the assistant deputy minister, environmental protection branch.

We have also have Laura Farquharson, director general, legislative and regulatory affairs, environmental protection branch, and Jacqueline Gonçalves, director general, science and risk assessment, science and technology branch.

To all those representing departments today, welcome back to the committee.

We'll get the ball rolling.

[*Translation*]

**Ms. Monique Pauzé (Repentigny, BQ):** Mr. Chair, I'd like to say something.

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

**Ms. Monique Pauzé:** Before we begin the clause-by-clause consideration of the bill, there are a number of irregularities, if I may say so, or items that should be clarified by the legislative clerk who is with us. It has to do with the way some of the provisions of the Bill S-5 are written.

I will give you a very specific example. On pages 2 and 3—

**The Chair:** You are referring to pages 2 and 3 of the bill, is that right?

**Ms. Monique Pauzé:** Yes, I'm referring to pages 2 and 3 of the French version of Bill S-5. It's at the very bottom of the page.

**The Chair:** You are referring to what's around line 45, is that right?

**Ms. Monique Pauzé:** That's it.

In the English version of the bill, after paragraph (a), there are subparagraphs (i), (ii) and (iii) that are really quite distinct. In the French version, all the text is compressed into one paragraph, which makes it harder to read.

Is that something we should correct?

**The Chair:** Give us a moment to check this out, please.

By the way, I'll warn you: We're going to take our time, because clause-by-clause consideration is complicated.

Apparently, this arrangement is normal. It should be understood that this is not an exact translation. According to the instructions given, one law clerk drafts the English version, but another law clerk drafts the French version. Apparently, the models used for the languages are not identical. I'm told that this is not a mistake.

**Ms. Monique Pauzé:** If I understand correctly, there are no consequences.

In some places, on pages 4 and 5, for example, both versions present subparagraphs in the same way. However, in other places in the bill, one version uses subparagraphs (a), (b) and (c), for example, but it's not quite the same in the other version.

I'd like to know if there are any consequences to this.

**The Chair:** It's true, it seems contradictory.

I'm told that I should ask the officials. They may be able to explain why the two versions diverge.

Does anyone want to answer the question now?

[*English*]

Can any of the officials speak to the fact that on page 2, in subclause 3(1), we have paragraph 3(1)(a) in both English and in French, but in English we then have subparagraphs 3(1)(a)(i) and 3(1)(a)(ii) and so on, but that is not reflected in the French.

Is that normal? Does anyone want to...? Our legislative clerk—

**Mr. John Moffet (Assistant Deputy Minister, Environmental Protection Branch, Department of the Environment):** I think Laura Farquharson may be able to respond to that.

**Ms. Laura Farquharson (Director General, Legislative and Regulatory Affairs, Environmental Protection Branch, Department of the Environment):** Yes. I'm just trying to look quickly at what you're looking at. I do believe it's a drafting custom that it's written one way in English and one way in French. It's just different—

**The Chair:** As Madame Pauzé points out, when you go to page 4 and paragraph 5.1(1)(d), they are identical in their formatting.

• (1310)

**Ms. Laura Farquharson:** Okay, I can't answer that right on the spot.

**The Chair:** That's fine.

Is there a way that, after this meeting, we can verify if this is an error?

**Mr. Michael MacPherson (Legislative Clerk):** Yes, of course, but I think you just have to take it—

**The Chair:** On faith.

**Mr. Michael MacPherson:** —that the justice department drafted this properly. It went through the Senate, and this is the form. As I said—

**The Chair:** Yes, it got through the Senate. The Senate saw it before and didn't pick up on this. Apparently we just have to trust the justice department on this—

**Mr. Greg McLean (Calgary Centre, CPC):** Come on.

[*Translation*]

**Ms. Monique Pauzé:** Maybe in the Senate, there are no francophones as tedious as my assistant and I when it comes to French.

**The Chair:** It's not a language issue. Things are not always done the same way in both official languages.

If you don't mind, we'll leave that question alone because it's really beyond the scope of our work.

**Ms. Monique Pauzé:** I just wanted to know if these irregularities have any consequences.

**The Chair:** Apparently, there are no consequences.

**Ms. Monique Pauzé:** In terms of readability, it's easier when items are arranged point by point.

**The Chair:** I agree with you. This seems to present a contradiction later on.

We need to set aside clause 1, which is the short title of the bill. We will come back to that at the end, as usual.

(Clause 2)

**The Chair:** We will continue with clause 2.

Would anyone like to move amendment NDP-1?

[*English*]

Go ahead, Ms. Collins.

**Ms. Laurel Collins (Victoria, NDP):** Thank you, Mr. Chair.

The amendment is that Bill S-5, in clause 2, be amended by replacing line 10 on page 1 with the following:

“ery individual in Canada and future generations have a right to a healthy environment-”

Really, the addition here is “future generations”. We heard from a number of witnesses that giving future generations the right to a healthy environment is important. We heard this from young people and from first nation leaders.

I hope that the committee will support this amendment.

**The Chair:** Is there debate?

[*Translation*]

**Mr. Gérard Deltell (Louis-Saint-Laurent, CPC):** Mr. Chair, I'd like to make a comment that has more to do with form than substance. Of course, in legislation, it's all about the words. I don't know if my colleague Ms. Pauzé sees the proposed wording the same way I do:

*qu'il reconnaît que tout particulier au Canada de même que les générations futures ont droit à un*

To be quite honest, this is the first time I've ever seen the word “*particulier*” used to refer to human beings. I checked and it's a correct usage, but I feel the word “*personne*” would be more suitable.

However, I don't mean to question the translators' authority, but I will follow Ms. Pauzé's lead.

**Ms. Monique Pauzé:** I hadn't seen that.

**The Chair:** Everyone seems to agree on the substance of the amendment, though, right?

**Mr. Gérard Deltell:** Before I say yes, I have to say, no silly pun intended, that I find it “particularly” peculiar that the word “*particulier*” is used.

**The Chair:** Okay.

Could the clerk shed some light on this for us?

**Ms. Monique Pauzé:** Would it be a friendly amendment if we replaced “*tout particulier*” with “*tout individu*”?

**Mr. Gérard Deltell:** From what I've noticed, I believe the word “*personne*” would apply better.

**Ms. Monique Pauzé:** Okay.

**The Chair:** Please hold on a moment. I'm going to check with the clerk so I can properly brief you on this.

Apparently, when you're dealing with bills, the concept of a friendly amendment doesn't apply. However, you can move a subamendment.

**Mr. Gérard Deltell:** Okay. So I'm going to follow the rules, of course, because I don't want to become too “particular”.

**The Chair:** Please specify what you want to propose, Mr. Deltell.

**Mr. Gérard Deltell:** As a subamendment, I move that, in the French version, the words “*tout particulier*” be replaced with the words “*toute personne*”.

**The Chair:** Would anyone like to debate this subamendment?

It seems not. Everyone seems to agree with your subamendment, Mr. Deltell.

• (1315)

**Mr. Gérard Deltell:** That's good, my first subamendment is an all-round success.

[*English*]

**The Chair:** Should we now go to a vote? Okay.

**Ms. Leah Taylor Roy (Aurora—Oak Ridges—Richmond Hill, Lib.):** I'm sorry; are we voting on the subamendment or on the amendment?

**The Chair:** That's what I'm trying to figure out. What are we voting on?

**Mr. Terry Duguid (Winnipeg South, Lib.):** It's the subamendment, and then we'll vote on the main one.

**The Chair:** Okay.

**Ms. Leah Taylor Roy:** The subamendment was in French.

**The Chair:** We're voting on the subamendment. Mr. Duguid is against it.

Go ahead, Mr. Clerk.

(Subamendment agreed to: yeas 6; nays 4 [*See Minutes of Proceedings*])

[*Translation*]

**The Chair:** Congratulations, Mr. Deltell, your subamendment is agreed to.

**Mr. Gérard Deltell:** It's a first.

**The Chair:** We will now vote on amendment NDP-1 as amended, unless anyone wishes to debate its content.

[*English*]

Go ahead, sir.

**Mr. Damien Kurek (Battle River—Crowfoot, CPC):** Chair, I see that one of our witnesses has his hand up. I'd certainly value the input of our experts.

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

**Ms. Laurel Collins:** Mr. Chair, I have a point of order.

Did you call the vote already? Are we allowed to go to witnesses after? Did you call the vote?

**The Chair:** No, apparently I didn't call the vote on the amendment. We just had the vote on the subamendment.

I was going to call the vote on the amendment if there wasn't anyone interested in speaking to it, but Mr. Kurek is interested. Mr. Kurek asked that Mr. Moffet give his opinion on the amendment.

Mr. Moffet, you're on mute.

**Mr. John Moffet:** Can you hear me now?

**The Chair:** Yes, we can.

**Mr. John Moffet:** I apologize for not intervening before the vote. I think I was on mute.

I just want to point out that the consequence of changing the terminology from “individual” to “person” means that this right would be extended to corporations as well as people. That was not the intention of the government in introducing this right.

The term “person” in common law has a broad interpretation. It includes corporations as well as humans.

**The Chair:** Thank you for that.

Go ahead, Ms. Collins, on the amendment.

**Ms. Laurel Collins:** I'd like to propose a subamendment to change it in the French version. I won't change it back, because I know we're not allowed to do that. Rather than saying—

**The Chair:** Just a moment, please. Could you hold that thought?

Just a second, I'm going to consult the legislative clerk.

Apparently you can't subamend your own amendment, but you could give the idea to somebody else.

**Ms. Laurel Collins:** I'll put an argument out that if someone wanted to make it “all people” in the French—I'm sorry, my French is not strong enough—and rather than “every individual” say “all individuals” so that we're not voting on the exact same subamendment, then we could return to the language that would not extend this to corporations.

• (1320)

**The Chair:** Just a moment, please.

[*Translation*]

**Ms. Monique Pauzé:** It should be replaced with “*individu*”.

**The Chair:** Thankfully, there is a solution. With unanimous consent, we can go back to the original wording.

**Mr. Gérard Deltell:** Mr. Chair, I don't want to start a war of words, but according to the definition in the *Larousse* dictionary, it's a human being, regardless of gender. I certainly don't wish to challenge Mr. Moffet on this, because I assume he has a lot more legislative experience than I do. However, that was the word I thought was most appropriate. If there is another one—

**The Chair:** You're talking about the word “*personne*”, right?

**Mr. Gérard Deltell:** Yes.

**The Chair:** Apparently, we want to avoid the word “*personne*” because it would include corporations.

**Mr. Gérard Deltell:** I know, but according to the dictionary definition, it's a human being, regardless of gender. If, by any chance, we have another definition, that's fine, no problem. As I'm saying, I won't fight over a word, but this appears to be the word that best describes what we're talking about here, which is human beings.

**The Chair:** I'm not a lawyer, I assure you, but I believe that in the field of law, the word “*personne*” has a rather specific meaning, which is a legal person.

[*English*]

**Mr. John Moffet:** Yes, and that's under the federal Interpretation Act, Mr. Chair. It's codified in law that it gives that broad interpretation.

[*Translation*]

**Ms. Monique Pauzé:** I propose the word “*individu*”, then.

**The Chair:** Even then, we'd be playing with fire a little. I consulted with the legislative clerk and my understanding is that changing one word in one part of the bill could have cascading effects. So we could get bogged down doing it that way.

I've been assured that the word "*particulier*" refers to people, not businesses or entities we call corporations.

[*English*]

Go ahead, Ms. Collins.

**Ms. Laurel Collins:** I just wanted to know if we had unanimous consent to—]

**The Chair:** We're working on that. I think we—

**Ms. Laurel Collins:** Could we test the room?

**The Chair:** Before I say yes, I'm going to ask for some advice. I'd rather wait before I test the room, Ms. Collins.

[*Translation*]

**Mr. Gérard Deltell:** The French word "*particulier*" doesn't refer to humans.

**The Chair:** If we have unanimous consent, we can leave the word as is in the original version of the amendment.

**Mr. Gérard Deltell:** I'm prepared to go back to the original wording if necessary, but according to the *Larousse*, the word "*particulier*" is defined as follows: which belongs to or is specifically assigned to someone, to something; which distinguishes someone or something; or which is characterized by something unusual. In short, that's a far cry from the individual or human being, along with the unborn child we want to protect.

**The Chair:** Apparently, the federal Interpretation Act assigns a different meaning to those words. I'm going to ask Mr. Moffet to weigh in because he's the expert. As you say, he has a lot of legislative experience.

• (1325)

[*English*]

Ms. Collins, is your hand up from before, or is it new?

**Ms. Laurel Collins:** It is new, but I'll wait for Mr. Moffett.

**The Chair:** Thank you. Go ahead, Mr. Moffett.

**Mr. John Moffet:** Thanks, Chair.

Under the federal Interpretation Act, unless a term is explicitly defined otherwise in a statute, then it is to be defined according to the Interpretation Act. The Interpretation Act provides that the term "person" in French and English has the broad definition that I just described. That includes—I'm not sure what the term is—"body corporate", I think, as well as a human. If we insert that language into this text, then we would be acknowledging a right held not just by Canadians or people in Canada but also by corporations in Canada.

[*Translation*]

**The Chair:** That seems pretty clear. Using the word "*personne*" would give rights to both corporations and individuals, and I don't believe that's really the intent of the bill.

Mr. Moffet just explained the need to look at the Interpretation Act, which tells us how to interpret federal statutes. In other words, the *Larousse* doesn't have the final say.

**Mr. Gérard Deltell:** In that case, Mr. Moffet, can you clarify how the word "*particulier*" is defined in federal statutes, according to Interpretation Act? Do you have an example? This isn't the first time human beings have been referred to in federal legislation. What French word is used for "human being"? We understand that it's not the word "*personne*". Is it "*particulier*", "*individu*", "*gens*"? Give me the specific French word used in other federal statutes to refer to humans, and we will use it immediately.

[*English*]

**Mr. John Moffet:** The term "*particulier*" was the term that the Department of Justice drafters used. It is a term that already appears in the French text of the existing—

**Ms. Laurel Collins:** On a point or order, Mr. Chair, there's a French interpretation coming through on the English channel.

**The Chair:** That adds to the problem.

Okay, can we resolve that? Then we'll get back to Mr. Moffett. Can you hear me in French, Ms. Collins?

[*Translation*]

Are you hearing the English interpretation of what I'm saying?

[*English*]

Yes. That's perfect.

Okay, Mr. Moffet, it's back to you.

**Mr. John Moffet:** Okay. The term "*particulier*" is the term that the Department of Justice drafters used in drafting this amendment. It is a term that is already used in other provisions in the existing CEPA to refer to humans, so it would be a consistent usage of the term throughout the act.

[*Translation*]

**Mr. Gérard Deltell:** That's the explanation I was looking for.

[*English*]

**The Chair:** What you're saying, Mr. Moffet, is that if we go with "*personne*" rather than "*particulier*", we have to bring in another CEPA amendment act to amend all of CEPA as it stands now, because that's the term they use in CEPA.

**Mr. John Moffet:** If there's any way to go back to "*particulier*"—

**The Chair:** Yes, we understand. That was a rhetorical question.

[*Translation*]

**Mr. Gérard Deltell:** Mr. Chair, if we have unanimous consent, I move that the decision that was made be rescinded, for the linguistic and legislative reasons that have just been clearly explained to us.

**The Chair:** Therefore, you agree that we should do this, if there is unanimous consent. That's fine. Thank you, Mr. Deltell.

[English]

Do we have unanimous consent?

[Translation]

**Some hon. members:** Agreed.

(Subamendment is withdrawn)

• (1330)

[English]

**Mr. Lloyd Longfield (Guelph, Lib.):** We'll start over.

**The Chair:** Now we vote on the amendment as is, not as amended—

**Mr. Terry Duguid:** Mr. Chair, can I ask for some commentary from Mr. Moffet on this amendment?

The amendment has been tabled, and I just wanted to ask a question of Mr. Moffet.

**The Chair:** Yes, of course, but we're dealing with “*particuler*”—the original.

Go ahead and ask your question of Mr. Moffet.

Wait a minute. Ms. Collins, did you have your hand up?

**Ms. Laurel Collins:** It's irrelevant now.

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

**Mr. Terry Duguid:** Could you tell me where we are, Mr. Chair?

**The Chair:** Yes, we are basically at the very beginning. We're voting on the amendment that has been put forward by Ms. Collins.

**Mr. Terry Duguid:** The subamendment is now off the table.

**The Chair:** That's right. It's done.

**Mr. Terry Duguid:** Good. I wasn't sure.

**The Chair:** Yes, we're back to the original amendment, NDP-1.

You wanted to ask Mr. Moffet a question.

**Mr. Terry Duguid:** Mr. Moffet, I think your advice on the addition of the NDP amendment regarding future generations is to not support the amendment.

I wonder if you could give us your advice on this and why we should or shouldn't vote for it.

**Mr. John Moffet:** I think my role is to explain the consequences of the amendment.

In this case, the amendment would change the scope of the right in the bill considerably. It's contrary to the entire approach that's been taken in drafting these provisions.

The bill proposes that the right would be acknowledged for all individuals living now. We need to draw a distinction between recognizing a right that future generations hold versus what is in the current text, which acknowledges that the current generation needs to take into account the needs of future generations. That provision and that concept are in the bill.

What is not in the bill, which would be changed by this amendment, would be to accord a right to people not yet born. That would, as I said, significantly change the nature of the right and diverge considerably from the government's intent in this case.

**The Chair:** Ms. Collins is next.

**Ms. Laurel Collins:** I would just refer people to the United Nations document on a call to action for human rights and the rights of future generations. It talks about the interlinked crises of climate change, environmental degradation, loss of biodiversity and pollution as violating the rights of people—everyday countless people—and threatening the effective enjoyment of human rights of future generations.

This call to action really recognizes that climate actions are impacting people today and they will also impact future generations. We've heard that from numerous witnesses.

**The Chair:** Would anyone else like to speak to the amendment?

[Translation]

I see that no one else wishes to speak, so we'll go to a vote.

[English]

(Amendment negated: nays 9; yeas 2 [See Minutes of Proceedings])

**The Chair:** Good. It's not good that it was negated, but good that we got through it.

Ms. May is an independent. Her amendment is deemed moved already and she has a right to a brief comment on the amendment she is proposing.

• (1335)

**Ms. Elizabeth May:** I'm sorry, Mr. Chair. May I please correct you, with all respect?

I am a Green Party member of Parliament. I'm not—

**The Chair:** I am sorry. I didn't mean it that way, Ms. May. I know.

**Ms. Elizabeth May:** You should check the map of the House of Commons. It seats us together.

**The Chair:** No, I meant.... Yes, I apologize.

**Ms. Elizabeth May:** It's okay.

**The Chair:** It doesn't change the fact that it's already been deemed moved.

**Ms. Elizabeth May:** Yes, and that's due to the terms of the motion passed by this committee that reduces the rights I would otherwise have, just to clarify that for all members. I'm here, I know, at some point, because I have many amendments. Some of you may regret that you passed a motion, without really knowing what you were doing, that says that members of parties with fewer than 12 MPs or who are independents must show up with their amendments at clause-by-clause stage even though we have the right to present them in the House as a whole, but for the motion.

This one is a fairly straightforward and small amendment. I hope it might be acceptable to the committee. What PV-1, my first amendment, proposes is to restore what has been in the Canadian Environmental Protection Act for decades, which is the concept of virtual elimination of a toxic substance.

We from the Green Party argue that the virtual elimination of toxic substances should remain within the Canadian Environmental Protection Act. We know there have been problems with the implementation of this act, of this concept of virtual elimination, but there are ways to ensure that virtual elimination of toxic substances from commerce can be restored to the act. I have additional amendments throughout the bill that make this more workable.

I know I have very little time under the terms of the motion to explain it fully, but I think members of the committee, I hope, are familiar with the arguments made by the Canadian Environmental Law Association about how removing virtual elimination weakens the act.

Thank you.

**The Chair:** Thank you, Ms. May.

Would anyone like to speak to this amendment?

Go ahead, Mr. Kurek.

**Mr. Damien Kurek:** I'd ask if any of the officials would have any....

I think this is going to happen just as a preamble to my question, Mr. Chair. Because this is an extremely technical bill, I expect that a question you'll hear often is asking the officials to expand on the impacts of some of these amendments as especially.... You know, with the paper I printed off, I felt almost guilty of a sin after printing off so much paper for an environmental bill.

My preamble is that I suspect we're going to often hear questions asking the officials, the drafting folks, the legislative clerk and the clerk to weigh in on some of the impacts of what these amendments may or may not include.

With that, Mr. Chair, I would ask if Mr. Moffet or other witnesses would have any insights to share related to the separate amendments, specifically PV-1.

**Mr. John Moffet:** Mr. Chair, I'm happy to provide an explanation for—

**The Chair:** Yes, please do so, Mr. Moffet.

**Mr. John Moffet:** MP May is correct in that the bill would slightly amend the preamble, essentially by removing reference to virtual elimination because virtual elimination is codified—well, defined—in the current CEPA, and there is a codified set of requirements regarding virtual elimination. As she explained, the implementation of those provisions has proven unworkable, despite two decades of effort.

There is a new approach proposed in the bill that would expand on virtual elimination, retain the emphasis on a default preference for prohibition of a broader set of substances than are referred to in the current virtual elimination regime, and define that group of substances as substances of highest concern.

In order to avoid confusion by retaining the reference in the statute in one place when we're removing it in all other places, the proposal is to remove it from the preamble while retaining the overall emphasis in the preamble on the need to control, manage and prevent pollution and waste.

I apologize. I said “highest concern”. I think the term is slightly different in the act, but we'll get to that provision later. The point is that there is now a new regime that is broader than virtual elimination and that focuses on giving a preference to eliminating those substances that are posing the worst kind of risk. It's broadening the concept in it but deleting this particular term throughout the act in order to avoid any confusion.

• (1340)

**The Chair:** Is there anyone else?

Okay, we'll call the vote.

**Ms. Elizabeth May:** May I be permitted a comment?

**The Chair:** Unfortunately, not. I've called the vote and....

**Ms. Elizabeth May:** I had my hand up, but it's okay. I had my hand up to make a comment before you called the vote, but I understand.

**The Chair:** No, I understand, but also—

**Ms. Elizabeth May:** But I'm not sure I'm even allowed to make comments—

**The Chair:** That's the thing—

**Ms. Elizabeth May:** I'm sorry.

**The Chair:** You were afforded some time at the beginning to speak to the amendment, and I believe I was quite liberal in that respect.

We'll go to the vote now.

**Mr. Michael MacPherson:** Shall PV-1 carry?

(Amendment negatived: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** We'll go now to amendment G-1.

Who would like to move that?

Go ahead, Mr. Duguid.

**Mr. Terry Duguid:** I would like to move that amendment, Mr. Chair.

**The Chair:** Go ahead.

**Mr. Terry Duguid:** Do you want me to provide the rationale?

**The Chair:** Yes, please. Well, if you wish....

**Mr. Terry Duguid:** Unless members have any questions, Mr. Chair, I would just let my motion stand.

**The Chair:** Does anyone want to comment or raise a question?

Go ahead, Madame Pauzé.

[*Translation*]

**Ms. Monique Pauzé:** First, I don't understand why we don't have the English version of the motion.



Then I discovered something else when reading this amendment. The French version uses “*principe de la prudence*” everywhere in the act. So we looked it up in the dictionary and did some historical research. In French, we use the word “*précaution*”. That’s what came out of the 1992 Rio Declaration. I understand that, at the time, the language chosen came from other public policy spheres, but in French, based on the Rio Declaration, it should be “*principe de précaution*”.

In fact, I remember doing a search on the Pest Management Regulatory Agency and noticing that, in that context, they also used “*principe de précaution*”.

The precautionary approach enacted in 1992 is as follows:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Therefore, I’d like to propose an amendment to replace the word “*prudence*” with the word “*précaution*”.

Based on its usage, the word “*prudence*” (“caution” in English) refers to accounting values. It’s one of the seven big accounting and economic principles. For example, accounting records should be collected with “*prudence*” (“caution” in English).

“*Principe de la prudence*” is not used when we talk about the environment. In this area, we always talk about the “*principe de précaution*” (“precautionary principle” in English).

• (1345)

**The Chair:** Thank you, Ms. Pauzé.

Ms. Collins, you have the floor.

[English]

**Ms. Laurel Collins:** I’m sorry, Mr. Chair. Sometimes the interpretation takes longer. Did you call my name?

**The Chair:** I did, yes.

**Ms. Laurel Collins:** Okay.

It’s not on Madame Pauzé’s point, but on the motion itself. This seems to change the French version to be more along the lines of “cost-effective” instead of “effective”. My French is not strong, but that’s my understanding.

In my opinion, I think the language of “effective” seems much more in line with where I’d like to see this bill go, rather than solely focusing on cost-effectiveness.

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

**Mr. Terry Duguid:** Thank you, Mr. Chair.

In the spirit of giving a full explanation, I’m proposing this amendment to respond to the other place’s amendment, to the “precautionary principle” formulations in the preamble.

In paragraph 2(1)(a) of the act, the ENEV committee of the Senate, as you know, amended the English version as subparagraph 2(1)(a)(ii) to remove the word “cost” from the phrase “cost-effective measures” in an attempt to better align the English provision with the French provision, which simply refers to “*mesures efficaces*”.

However, the discrepancy between the English “cost-effective measures” and the French “*mesures efficaces*” is not a translation error and in fact is consistent with the English and French versions of the 1992 Rio Declaration on Environment and Development upon which the provision is based. In order to avoid misalignment and to ensure that the key notion that precautionary measures be cost-effective remains in CEPA, the government proposes to correct the purported translation error by amending the French version of the act rather than the English.

That was a long explanation, Mr. Chair, but I hope that clarifies things.

**The Chair:** Thank you.

Is there anyone else?

[Translation]

Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** I understand what Mr. Duguid just said about his amendment, but I’m not sure he answered my question about the fact that this is about the “*principe de précaution*” rather than the “*principe de la prudence*”. That is the point of the sub-amendment I wanted to propose. A little later, I will also propose that we use the definition given in the Rio Declaration.

What I don’t like about the wording of amendment G-1 is the use of the term “*mesures rentables*” when talking about “*remettre à plus tard l’adoption de mesures rentables*”. What are “*mesures rentables*”? Does it mean that it has to be profitable only in economic terms?

Personally, if those are the words being used, I will vote against the amendment, even though it supposedly makes a correction to the French version.

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

**Mr. Gérard Deltell:** As I understand it, we should be talking about measures that are “*efficaces*” rather than “*rentables*”, but I’ll come back to that later, as that’s not what we’re dealing with right now.

Again, I would like to call on Mr. Moffet’s knowledge and ask him to clarify what he thinks of Ms. Pauzé’s suggestion to change the word “*prudence*” to “*précaution*”.

Mr. Moffet, since this is once again a question of changing words and since the explanations you gave on a previous question a few minutes ago convinced us very well, I appeal again to your knowledge. In your opinion, is the word “*précaution*” more appropriate than the word “*prudence*”?

**Ms. Laura Farquharson:** I can answer that question.

We always rely on our colleagues in the Department of Justice. In this context, it is the word “*prudence*” that is used, and I think that is the right word. It is also the word that is used in federal law in other contexts.

**Mr. Gérard Deltell:** When you talk about the federal legislation, are you talking specifically about the one we’re looking at right now or other federal legislation related to the environment?

Ms. Pauzé's point is well taken. As she explained to us earlier, the wording refers to what is in the Rio Declaration, and it is the word "*précaution*" that is used there. If we want to be consistent and coherent in talking about the environment, it would certainly be historically justified and justifiable.

• (1350)

**Ms. Laura Farquharson:** The word "*prudence*" is used elsewhere in the original CEPA text as a translation of this principle. For example, I believe it is used in section 76.1, as well as in the preamble, which the committee is reviewing.

**The Chair:** Thank you.

Mr. Duguid, you have the floor.

[*English*]

**Mr. Terry Duguid:** Mr. Deltell asked my question. Thank you.

[*Translation*]

**The Chair:** All right.

Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** I completely agree with Ms. Farquharson. It is true, and we have checked it, that they use the word "*prudence*" in the 1999 act.

Please recall, however, the point I was making earlier. Perhaps that was the language that was used at the time. After all, it was only seven years after the Rio Declaration. Now, in the context of environmental laws, it is the precautionary principle that is put forward instead, as defined in that declaration.

By the way, with regard to "*mesures rentables*", in English, I think it says "cost efficiency".

[*English*]

**The Chair:** It's "cost-effective".

[*Translation*]

**Ms. Monique Pauzé:** Yes. The term used in the English version corresponds to the one used in the Rio Declaration.

I don't like the fact that the French version talks about "*mesures effectives*", but I figure what's sauce for the goose is sauce for the gander. So, if I'm working for the precautionary principle, even though I don't like the word "*effectives*", I'll accept it, because that's the term used in the French version of the Rio Declaration. I would therefore like to see a correction made. I will table an amendment to that effect.

We cannot maintain an error that dates back to 1999. We have to be consistent with what the government signs internationally.

**The Chair:** We have just discussed the amendment, but have there been any proposals for subamendments? I think not.

**Ms. Monique Pauzé:** Yes; I suggested that we replace the word "*prudence*" with "*précaution*".

**The Chair:** This is because there was also talk of "*mesures rentables*".

If I understand correctly, your subamendment seeks to replace "*prudence*" with "*précaution*".

**Ms. Monique Pauzé:** That's right. Also, if possible, I would like to see the word "*rentables*" later in the wording replaced with "*effectives*".

**The Chair:** All right, but at the moment we are discussing the proposal to replace the word "*prudence*".

Mr. Moffet, you have the floor.

[*English*]

**Mr. Damien Kurek:** Mr. Chair, I have a point of order.

Was a subamendment just moved? Is that my understanding?

**The Chair:** Yes, Madame Pauzé would like to substitute the word "*précaution*" for "*prudence*".

I see that Mr. Moffet has his hand up.

**Mr. John Moffet:** Mr. Chair, I just want to make the observation that these terms have been used consistently in multiple federal statutes since the Rio Declaration on Environment and Development in the manner in which they currently appear in CEPA.

One possible consequence of amending CEPA with regard to this definition would be that it would call into question the intention of the other statutes that retain the original Rio terminology. In turn, that could have unintended implications for the intended requirement in those statutes to exercise the precautionary principle in decision-making.

From a government, statutory, consistency perspective, it would be our recommendation to retain the same terminology that has appeared in all federal statutes since 1992, that has not been subject to challenge, and that has enabled officials and decision-makers to exercise the precautionary principle consistently.

• (1355)

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

**Mr. Damien Kurek:** Thank you, Mr. Chair.

Since my French is far from passable and since this is a unique amendment because both the English and French of the amendment are in French, Mr. Chair, my question to the experts—and possibly the mover of the motion—is this: If this subamendment changes that particular word, is there an impact on the rest of the bill? Is it setting a precedent that would require that particular word?

If I'm following the conversation correctly, would "*prudence*" be required to be changed throughout the entirety of the act? Would this have implications?

I think Mr. Moffet was implying that if it starts here, then the consequence would be the entirety of CEPA, both what is amended and what is not, and related acts. I know some of the witness testimony we heard talked about this being one of a number of acts related to environmental regulation, whether it be in agriculture, health, pharmaceuticals or that sort of thing.

My question comes down to this: If that word is changed in this amendment *en français*, does that have sweeping consequences across the entirety of this act and possibly other acts?

**The Chair:** Well, let's ask Mr. Moffet.

**Mr. John Moffet:** The short answer is “yes” with regard to CEPA and other statutes.

Certainly in CEPA the terms appear at least four other times. In some cases, it's in provisions that have not been amended by Bill S-5 and are therefore not open to this committee to amend.

**The Chair:** Is there anyone else?

Go ahead, Madame Pauzé.

[*Translation*]

**Ms. Monique Pauzé:** I want to come back to the word change.

This error is over 20 years old. I am trying to correct what may have been a translation error, at the time. I will recall what I said earlier. The Rio Declaration was signed by Canada in 1992 and the act came not long after, seven years after that declaration. There may have been a slip in the translation.

I don't understand why we are not able to correct this. Are federal laws so rigid that we can't even correct a 20-year-old mistake?

I don't care what legal argument I'm given, I'm saying that Canada signed the Rio Declaration, and I'm asking that our environmental law be consistent with that declaration that we signed internationally. This declaration does not refer to the “*principe de prudence*”, which is an accounting and economic principle, but rather to the “*principe de précaution*”, which is a principle that applies to the environment.

[*English*]

**The Chair:** Go ahead, Ms. Collins.

**Mr. Terry Duguid:** Did you call the vote?

**The Chair:** I'm asking Ms. Collins, and she's waiting for the translation.

**Ms. Laurel Collins:** I was. Thank you, Mr. Chair.

Thank you, Mr. Moffet, for that explanation.

I just want to be very clear, because in general I think I support Madame Pauzé's change. I also oppose the intention of the original motion, and I would much prefer that we change the English version to “effective” rather than “cost-effective”. However, from what I'm hearing, if we were to do that, we would have to change a number of areas in this act—the ones we can change—but there are areas in this act that we're unable to change, and then they would be inconsistent.

I just want to make sure that I'm comprehending that correctly. Mr. Moffet, can you just clarify? Did I get that right?

**Mr. John Moffet:** I'm suggesting that in order to be consistent, that would be the appropriate consequence so that the same terms are used consistently throughout the act and then, ideally, throughout all federal statutes.

**Ms. Laurel Collins:** Just for this act in particular, if we were to go and change everything from “cost-effective” to “effective” and

from “*la prudence*” to.... I am forgetting the French word that Madame Pauzé suggested, but if we were to do that for all of the areas that we can change, what is the impact of having that inconsistency with areas that we can't change in this act?

• (1400)

**Mr. John Moffet:** I think the short answer is that we don't know, so it would create uncertainty because you would have the same term defined in different ways in the same statute. I'm reluctant to speculate, but I think we can say that it would create some uncertainty as to the way in which the various provisions might be interpreted, particularly if they're subject to judicial review.

**Ms. Laurel Collins:** I guess I have a follow-up question.

I think changing this in all of the areas that we possibly can and opening up some uncertainty—meaning maybe moving in the direction of “effective” versus “cost-effective” and the precautionary principle—doesn't seem too dangerous to me, but I'm curious what the danger is that you see or what the negative repercussion of that uncertainty is.

**Mr. John Moffet:** I think the concern that I'm articulating is that we would have what was intended to be the same obligation associated with various decisions under the act now subject to different legal obligations, or at least differently defined legal obligations.

I think the concern is that if a decision made under one of those provisions was challenged in a judicial review, the fact that there are different definitions in the act could lead to an unintended outcome. I don't think I can point to a very specific implication other than the risk of uncertain outcomes as a result of what would be an inconsistent approach to precaution in the statute.

Again, I remind you that the definition hasn't been challenged or the exercise of precaution hasn't been challenged to date.

**Ms. Laurel Collins:** Thank you.

**The Chair:** I have Mr. McLean.

**Mr. Greg McLean:** Sorry, Mr. Moffet, but could you tell us what other statutes this slight change here might affect, where “prudence” is listed as opposed to “precaution”? You mentioned that there seems to be some problem, in that this change would affect several other bills by being inconsistent. It would be good for this committee to know which bills you're referring to.

**Mr. John Moffet:** Go ahead, Laura.

**Ms. Laura Farquharson:** I don't think we've done a full survey on this particular question, but I believe that it was under the Rio declaration that we used “*prudence*” and “cost-effective” in English. I think it's the Federal Sustainable Development Act that also uses “*prudence*”. The Canada National Marine Conservation Areas Act also uses “*prudence*”. The Pest Control Products Act also uses “*prudence*”. It is in a number of statutes.

I would say that “cost-effective measures”, which is definitely how the precautionary principle is interpreted, is different from “effective measures”. My understanding of the Senate amendment is that we were not trying to change the concept; we were trying to get the translation right. If the English is “effective measures”, meaning “cost-effective measures”, then the French should align with that and say, “*mesures rentables*”.

• (1405)

[Translation]

**The Chair:** Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** I would like to add that in 1999, the Government of Canada established that the precautionary principle concept should be understood as follows:

[English]

The government's actions to protect the environment and health are guided by the precautionary principle, which states that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

[Translation]

This is exactly what is in the Rio Declaration, but at the time it was mistranslated into French. The words “precautionary principle” were translated as “*principe de la prudence*”. It is this error that needs to be corrected, 20 years later.

No one can provide any example where this might have confused the judges. I think we need to clear this up.

In fact, a little later, I am going to table an amendment defining the precautionary principle. Of course, I will take the definition found in the Rio Declaration, since that is the one used in English. That is all I want to do.

I'm starting to get mad, I apologize, but enough is enough. We're getting bogged down for a word that has been clearly defined since 1992. There is an error dating back to 1999. It is said that this could pose a problem for judges. I'm sorry, but I really don't agree.

[English]

**The Chair:** Ms. May, technically speaking, as you know, you're permitted to speak to your amendments and so on, but it is at my discretion. If what you have to say is very brief, because I know you were at Rio, I will allow it, but be very brief, please.

**Ms. Elizabeth May:** The precautionary principle, as read out by Madam Pauzé, was correct. For the benefit of committee members, the addition of the notion of “cost-effective” was not in a precautionary principle at Rio, nor was it in the Stockholm declaration. It's not in our Oceans Act when precautionary principles are referenced, nor is it in the Canada National Marine Conservation Areas Act.

**The Chair:** Thank you.

Go ahead, Ms. Collins.

**Ms. Laurel Collins:** I was going to say something very similar to what Ms. May just brought up. It's just that in the precautionary principle in Stockholm, “cost-effective” isn't mentioned.

I do want to correct the record. The Senate committee clearly spoke to removing the word “cost”. Their rationale was so that we don't limit environmental protection. Rather than reinserting this into the translation, I think we should actually just correct it in full and remove “cost” throughout.

That said, I think it seems likely that a majority of committee members might keep it in. I would love it if we could kind of move this along. I'm not sure if Madame Pauzé had officially submitted her subamendment, but I'm very much in support of it and I would love to come to a vote soon, if possible.

[Translation]

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

**Mr. Gérard Deltell:** My question is addressed to the experts and specialists.

In the event that the committee votes in favour of this amendment, which seeks to replace the word “*prudence*” with the word “*précaution*” in order to respect the correct translation of the word used in the English version, would this have any impact on Bill S-5? I'm only talking about Bill S-5. Are there any words referring to this principle that would need to be changed if the word “*précaution*” were used instead of “*prudence*”?

[English]

**The Chair:** Mr. Duguid, do you want to be on the speaking list?

**Mr. Terry Duguid:** Yes, please.

[Translation]

**Mr. Gérard Deltell:** I would just like to add that it is not necessary to have the answer immediately.

**The Chair:** I believe Mr. Moffet is waiting to hear the interpretation of your question.

[English]

**Mr. Gérard Deltell:** I'm sorry.

**The Chair:** We're just waiting for the interpretation.

While Mr. Moffet searches the bill, Mr. Duguid has the floor.

**Mr. Terry Duguid:** Mr. Chair, as many folks have already said—Mr. Kurek in particular—it's a technical bill. We're parsing language here. It might be best, Mr. Chair, as I understand the procedure, to stand this matter so that we can sort it out.

Do I move that?

• (1410)

**The Chair:** I'll find out.

[Translation]

**Mr. Gérard Deltell:** Mr. Chair, let me make a suggestion. This is a very interesting issue, but time is running out. I would recommend that the experts take the time to determine if the word “*prudence*” would have any impact elsewhere in the act and provide us with an answer at the next sitting when we consider the bill.

**The Chair:** This is what Mr. Duguid is proposing. He wants us to put aside the debate on this amendment, so that we can take the time to get the proper information. At the moment, we are going around in circles.

**Mr. Gérard Deltell:** Please note that I would be willing to go to a vote. If the vote is positive and the committee agrees, the experts will do due diligence.

**The Chair:** That is noted, but Mr. Duguid has suggested that we put this debate to one side. So I need to find out how to proceed. I think I understand, but we will see.

Mr. Duguid has proposed that we set aside the debate on the amendment. We have to decide on that.

Are you all in favour of setting aside debate on this amendment?

**Some hon. members:** Agreed.

(Subamendment stood)

(Amendment stood)

(Clause 2 stood)

[English]

**Mr. Damien Kurek:** Just to clarify, is that the subamendment or the amendment in general?

**The Chair:** It's on clause 2, the whole clause.

**Mr. Damien Kurek:** It's the whole clause.

**The Chair:** The subamendment is in abeyance now.

**Mr. Damien Kurek:** I was hoping we could get through one clause today, but—

**The Chair:** We're on NDP-2—

**Mr. Lloyd Longfield:** On a point of order, I think that clause was stood down, so we're into clause 3 now, Mr. Chair.

(On clause 3)

**The Chair:** Okay, we're on clause 3 and amendment G-2, which is on page 8.

Would somebody like to move it?

**Mr. Greg McLean:** Do you mean G-2?

**The Chair:** Yes.

**Mr. Terry Duguid:** Yes, Mr. Chair.

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

**Mr. Terry Duguid:** Yes, Mr. Chair, I will move this government motion to respond to the other place's amendment to the precautionary principle in paragraph 2(1)(a) of the act.

Once again, the ENEV committee amended the English version of the subparagraph 2(1)(a)(ii) to remove the word “cost” from the phrase “cost-effective measures” in an attempt to better align the English provision with the French provision, which simply refers to “*mesures effectives*”. However, the discrepancy between the English “cost-effective measures” and the French is not a translation error and in fact is consistent with the English and French versions of the 1992 Rio Declaration on Environment and Development upon which the provision is based.

This does sound a lot like my previous intervention, Mr. Chair.

In order to avoid misalignment and to ensure that the key notion that precautionary measures be cost-effective remains in CEPA, the government proposes to correct the purported translation error by amending the French version of the act rather than the English.

I don't know if we could get Mr. Moffet to provide some commentary again, Mr. Chair.

• (1415)

**Mr. John Moffet:** I don't think I have anything more that I can add to the extensive discussion on this topic today.

**The Chair:** I have Ms. Collins and then Madame Pauzé.

**Ms. Laurel Collins:** I'll reiterate the fact that the Senate purposely took out the the word “cost”, so the translation error here should be switched if we were going to return to what the Senate had amended.

To go back to 1999, when the committee was looking at this issue for the 1998 CEPA bill, Bill C-32, some Liberals, along with some Progressive Conservatives and NDP and Bloc members succeeded in committee with an articulation excluding the word “cost”, but then it was overturned by the cabinet and the Liberal reform folks at report stage. That's a little bit of history on this.

There are lots of people who want the word “cost” taken out of this. Again, notably, it is not in the Stockholm declaration or in a number of the other ones that Ms. May had articulated.

**The Chair:** I have Madame Pauzé, followed by Mr. McLean.

[Translation]

**Ms. Monique Pauzé:** You're going to find me tiresome on this. That said, I'm not going to correct the Rio Declaration. In the English version we looked at, it says “cost-effective”, and that's translated into French as “*mesures effectives*”, not “*mesures rentables*”.

We have looked at the current act. Under “Administrative Duties”, in the “Duties of the Government of Canada”, subsection 2(1) states:

2(1) In the administration of this Act, the Government of Canada shall, having regard to the Constitution and laws of Canada and subject to subsection (1.1),

(a) exercise its powers in a manner that protects the environment and human health [...]

A little further on in the description, it says:

[...] shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, and promotes and reinforces enforceable pollution prevention approaches [...]

In the French version it says: “[...] *ne doit pas servir de prétexte pour remettre à plus tard l'adoption de mesures effectives*[...]”

I don't understand why anyone would change the French version. I would keep "cost-effective" in the English version of the act, for the reason I gave earlier: it is the term used in the English version of the Rio Declaration. Now, in French, it should be "*mesures effectives*", as it was in the original text of the act.

I could propose a subamendment to replace "*mesures rentables*" with "*mesures effectives*". Personally, I would prefer the word "*efficaces*" be used, but I won't get hung up on that. So it would be back to what was in the act, which was "*mesures effectives*".

**The Chair:** Are you moving a sub-amendment?

**Ms. Monique Pauzé:** Yes.

**The Chair:** Very well. Give me a minute to check something.

[English]

Do you want to address the subamendment, or do you want to wait until...? Okay.

• (1420)

**Mr. Terry Duguid:** Could you repeat it, Mr. Chair?

**The Chair:** Repeat what?

**Mr. Terry Duguid:** The subamendment.

**The Chair:** Yes. We want to change "*rentables*" to "*effectives*".

[Translation]

**Ms. Monique Pauzé:** Yes, that is correct. That is the term that is used in the act.

**The Chair:** You're talking about the one from 1999, right?

**Ms. Monique Pauzé:** Yes. It is found in paragraph 2(1)(a), under the headings "*Application administrative*" and "*Mission du gouvernement fédéral*".

**The Chair:** All right.

We'll debate the subamendment.

Are there any members of the committee who wish to speak to this?

[English]

Go ahead, Mr. Kurek.

**Mr. Damien Kurek:** Sorry, Chair; I'm hoping that we can clarify. The subamendment would remove "cost"?

**The Chair:** No, the subamendment would—

**Mr. Greg McLean:** It's French only.

**The Chair:** It's only to the French.

Instead of "*rentables*" the word would be "*effectives*".

**Mr. Damien Kurek:** Okay, so it's only changing the French.

**The Chair:** Yes, we're not changing the meaning of the English; we're just changing a word in French.

Would anyone else like to speak to the subamendment before we vote?

(Subamendment agreed to: yeas 11; nays 0 [See *Minutes of Proceedings*])

**The Chair:** Now we go to the amendment as amended.

Mr. McLean, you wanted to speak to it.

**Mr. Greg McLean:** Yes, thank you.

I think much of translation now will be "cost-effective" from "*effectives*" in French.

The thing about "effective" is it's a subjective term. I think my colleagues around the table understand that the more precision we get in this wording, the better, and "cost-effective" is actually measurable, so I do think it's important to change it back to "cost-effective".

**The Chair:** Is there anyone else?

I call the vote on amendment G-2 as amended.

(Amendment as amended agreed to: yeas 10 ; nays 1 [See *Minutes of Proceedings*])

**The Chair:** We go to NDP-4.

Who would like to move this amendment?

• (1425)

**Ms. Laurel Collins:** I would, Mr. Chair.

**The Chair:** I guess it's you, Ms. Collins. Go ahead.

**Ms. Laurel Collins:** This language around protecting the rights of nature comes from not only a number of organizations but also a number of first nation individuals who have been advocating to protect the rights of nature.

Here where I live on Vancouver Island in the Salish Sea, the Esquimalt and Songhees nations have participated in reconciliation dialogues asking for areas to be protected, recognizing that nature should have rights, since in their opinion these are living entities. There has also been an amazing movement around the St. Lawrence River as well, and around the world. In areas like New Zealand there are folks who are advocating to protect the rights of nature.

**The Chair:** Would anyone else like to speak to this amendment?

Mr. Longfield, go ahead, please.

**Mr. Lloyd Longfield:** Thank you, Mr. Chair.

I wonder if Mr. Moffet could comment on changing it from the rights of individuals to the rights of nature.

**Mr. John Moffet:** My comment on this will be similar to one that I made earlier in the meeting, which was that this would fundamentally change the scope of the right that is articulated in the bill, which at the moment is focused on individuals, people, and it would confer that right on humans as the rights holders.

Recognizing that nature or components of nature have rights of their own would represent a fundamental paradigm shift, and it's certainly not one that the government has yet contemplated or thought through fully, so in addition to that kind of fundamental change in the focus of the right that would be provided by Bill S-5, the bill as currently written doesn't contain any supplementary or complementary provisions that would provide legal personhood or any corresponding procedural or substantive rights to nature.

By contrast, of course, the way we've articulated the right to humans is supplemented in CEPA already, and in Bill S-5 with various additional procedural rights and additional substantive rights in order to give life to that new right. We have not provided for any such additional provisions related to the rights of nature in Bill S-5.

**The Chair:** We will go to Mr. McLean, followed by Ms. Collins.

**Mr. Greg McLean:** Again, in this bill, what we're trying to do is to get precision around these definitions, and without a definitive decision around the rights of nature, I think it is probably as open-ended as anything we've considered in this House of Commons since I've been here.

Thank you.

**The Chair:** Go ahead, Ms. Collins.

**Ms. Laurel Collins:** I want to thank the officials and other members for their comments.

Really, expanding rights and including the rights of nature means that we are acknowledging that it has the right, in and of itself, to exist and to flourish. This is something that other countries have been doing, and I would be happy to work with officials to change other areas of the act.

We did skip through a number of sections in clause 2 that have further amendments on the rights of nature, and I hope that the committee would consider this really important move when it comes to protecting our ecosystems and natural communities.

**The Chair:** Thank you.

Are there any more comments before I call the vote?

Go ahead, Mr. Weiler.

**Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.):** I'll just say I think this is a really interesting addition. I don't think inserting this where it is right now, essentially, given what Mr. Moffet has said, will really give the right framework to put it into place. I think this is something that would be very interesting for us to study in the committee, perhaps in a future study, so that we could look at what it would actually look like to implement this in practice to really do it justice. However, given the concerns that have been raised by Mr. Moffet, I have some concerns as to whether this amendment would be an effective way of doing that.

● (1430)

**The Chair:** Is there anyone else?

Okay. I call the vote on amendment NDP-4.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** The issue will probably come up in our water study because of the Magpie River phenomenon, so we can look forward to that.

We'll go on to amendment NDP-5. Would you like to move that, Ms. Collins?

**Ms. Laurel Collins:** I will move it, although I hope there won't be too much discussion as it is in a similar vein to previous amendments to "protect the right of every individual in Canada and future generations".

**The Chair:** Is there any discussion? No?

(Amendment negated: nays 9; yeas 2 [*See Minutes of Proceedings*])

**The Chair:** We move on to Green Party amendment 2. It's already deemed moved, so I would ask Ms. May to make a brief explanation in support of her motion.

**Ms. Elizabeth May:** Thank you, Mr. Chair.

Thank you for the indulgence earlier to allow me to provide more detail from history.

This amendment, specifically to draw members' attention to the biggest change to the text we have in front us, is to remove the words "subject to any reasonable limits". I'll note that in other acts of this kind, in environmental and human rights legislation, no such qualifying language is used to limit the application of these principles. The language I have proposed here is all found elsewhere within the act, and clearly members are very familiar with the notion of applying the precautionary principle, the principles of environmental justice, the polluter pays principle and the principles of sustainable development, substitution, non-regression and intergenerational equity.

I will again draw members' attention to the fact that at this stage it is quite inappropriate to include the words "subject to any reasonable limits". That language was removed in relation to the right to a healthy environment when this bill was before the Senate.

I hope this is just tidying things up to keep things consistent.

Thank you, Mr. Chair.

**The Chair:** Thank you.

Is there any discussion?

Go ahead, Mr. McLean.

**Mr. Greg McLean:** First of all, I'll ask Mr. Moffet for the interpretation of these legal terms and how they'll impact the legislation by being inserted here, and then I'll speak to it again after that point.

I want to hear Mr. Moffet first, please.

● (1435)

**Mr. John Moffet:** I'd like to turn to my colleague Laura Farquharson.

**Ms. Laura Farquharson:** To clarify, “subject to any reasonable limits” remained in the bill after the Senate studied it, and as witnesses before the committee acknowledged, no right is absolute. That’s what “subject to any reasonable limits” indicates. If you took it out, the implication might be unclear.

As for adding the additional principles, the way the provision is constructed, the list is not exhaustive as it is. Other principles could be part of what’s considered in “the right to a healthy environment”. It would be elaborated on in the implementation framework and it might include some of these principles. That’s something that could be discussed as we develop the implementation framework.

I would say that at least one of the principles, “substitution”, is specifically related—at least from my understanding—to chemicals management, substances management, whereas this right is applying to the whole act. I think it might be better to highlight the few key principles—as has been done—that should be covered and allow for others to be explored through the process of developing the implementation framework.

**The Chair:** Mr. McLean, you said you had a follow-up question.

**Mr. Greg McLean:** I do. My colleagues will know, because I’ve spoken about this before, that these principles we’re talking about here have little to no legal standing in any court that I know of. If it’s true that there have been cases decided in which it has been determined what these terms mean on a legal basis, particularly in Canada—things like principles of “substitution”, “non-regression”, “intergenerational equity” and “environmental justice”—I have yet to see any tangibility around these terms. As opposed to this committee drafting or approving legislation that will open up somebody else to interpreting what we mean here, I think it is kicking the can down the road.

I think we have to get precise in what we’re trying to accomplish here and not just put nice words on paper but find something that lands. I will be saying this whenever these terms come up in this bill. These are not, as far as I know, tangible terms for which any meaning has been determined through a legal process. I can be educated on this, but I’m certain it hasn’t happened in Canada. The meaning of this terminology is wide open and subject to somebody else’s interpretation at this point in time.

Thank you.

**The Chair:** Go ahead, Ms. Collins.

**Ms. Laurel Collins:** I want to speak in support of this motion—I have a very similar one that follows—with the exception, I think, of something that maybe strengthens my motion in this motion by Ms. May. I think the polluter pays principle is a really valuable addition. I think something that could strengthen both of our motions would be changing the word “applying” to “upholding”. If this doesn’t pass, I’ll likely be submitting a motion from the floor right afterward.

[*Translation*]

**The Chair:** Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** I am not going to go back to the precautionary principle. That said, I will propose a definition of this principle when we get to clause 4 of the bill.

I want to say to Ms. May that I will vote for her amendment, even though in ecological and environmental circles the French word “*durable*” has been discussed for at least 10 years. Some people say that we should not say “*durable*”, but “*viable*”. I have participated in some of these discussions.

I find that Mr. McLean’s arguments are also correct. Nevertheless, as a matter of principle and because it clearly mentions “environmental justice” and “polluter pays”, I will be voting for the amendment.

● (1440)

[*English*]

**The Chair:** Ms. Taylor Roy is next.

**Ms. Leah Taylor Roy:** Thank you.

While I agree with what Ms. Pauzé and Ms. May are saying here—and Ms. Collins on the next one—I think there are differences between the one Ms. May put forward and the one Ms. Collins put forward. I’m looking at this as the statute. We have the whole section on implementation framework. These principles do change over time. Some of these, as Mr. McLean was saying, aren’t well defined right now. New ones will be introduced as we continue to make progress in the environmental field. I feel as though these are the types of things that we’d be better off addressing when we have time to really address them over the next year or two in the implementation framework.

That would be my suggestion on how we deal with this, as opposed to putting it into the statute here.

[*Translation*]

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

**Mr. Gérard Deltell:** We are studying a bill. We may agree on some principles or disagree on others, but principles must be defined in a piece of legislation. This is not an electoral program, a speech or something you say. As long as this is not clearly defined in the text of the law, it can have all sorts of consequences, since laws are made to be observed, applied, and even challenged and then interpreted by judges in court. So, at this stage, the terms must be defined. The current amendment does not do this.

**The Chair:** Are there any other interventions, questions or comments?

As there are none, we will proceed to the vote.

(Amendment negatived: nays 9; yeas 2 [*See Minutes of Proceedings*]).

**The Chair:** We now turn to amendment NDP-6.

[*English*]

**Ms. Laurel Collins:** Mr. Chair, rather than moving that amendment, I’m going to move the same wording, except I’m going to change the word “apply” to “uphold”.

The amendment I will move would be as follows:

That Bill S-5, in Clause 3, be amended by adding after line 13 on page 3 the following:



“(a.3) in relation to paragraph (a.2), uphold principles such as principles of environmental justice — including the avoidance of adverse effects that disproportionately affect vulnerable populations — the principle of non-regression and the principle of intergenerational equity;”

**The Chair:** Okay. You're moving it with “uphold” instead of “apply”. Is that correct?

**Ms. Laurel Collins:** Yes, I'm not moving my original motion; I'm moving the same language, with “uphold” instead of “apply”.

**The Chair:** Okay.

Is there any discussion?

Go ahead, Mr. Duguid.

**Mr. Terry Duguid:** I'd like to—

**The Chair:** I'm sorry. Ms. Collins, do you want to speak to your motion?

**Ms. Laurel Collins:** We've talked a little bit about it already, but I do think that naming some of these principles in the bill is important. They do already appear in CEPA. Especially when we're talking about vulnerable populations, it's so essential.

I recognize that the committee didn't want to explicitly give the right to future generations, but the principle of intergenerational equity is one that I think everyone can get on board with, and it wouldn't have, I think, the same kind of ramifications that extending the full right to a healthy environment to future generations would. It's essential that we uphold these principles of environmental justice.

• (1445)

**The Chair:** I think Mr. Duguid wanted to speak.

**Mr. Terry Duguid:** Can we just suspend for about two minutes, Mr. Chair?

**The Chair:** Sure. We're going to suspend for two minutes.

• (1445)

(Pause)

• (1445)

**The Chair:** Mr. Duguid, do you want to speak to this?

**Mr. Terry Duguid:** Now, I'm just unclear on procedure, Mr. Chair. She's put a motion on the floor. Is that correct?

**The Chair:** Yes, but the motion is not the one that's in your package.

**Mr. Terry Duguid:** That's correct.

**The Chair:** It has a new word.

**Mr. Terry Duguid:** This side will be supporting that motion.

**The Chair:** Okay. Is there anyone else?

**Mr. Greg McLean:** Is there a motion to change the motion?

**The Chair:** No, the motion as it is in your package was not moved. An alternate motion was moved, which is basically identical, except the word “uphold” is where the word “apply” was.

**Mr. Greg McLean:** Okay.

Mr. Moffet previously spoke at this committee about the rights of future generations that we're trying to build into this bill, so can I speak to him again?

If the principle of intergenerational equity is the same thing we voted down earlier, I'd like his input on how his interpretation is different from what he spoke about earlier on respecting the rights of future generations and intergenerational equity.

**Mr. John Moffet:** I'll start. I might need to be supported by my colleagues.

The basic difference I want to bring to your attention is the difference between giving a right to future generations versus putting an obligation on current decision-makers to account for the interests of future generations. Intergenerational equity refers to the latter concept in the way it's constructed in CEPA now, so it requires us when we make decisions today to consider the impacts on future generations. That's not the same as giving a right to a future generation.

**The Chair:** Does that answer your question, Mr. McLean?

It does. Okay.

Is there anyone else?

**Mr. Terry Duguid:** Mr. Chair, can you read the subamendment, please?

**The Chair:** There's no subamendment.

**Mr. Greg McLean:** It's a different motion.

**Mr. Terry Duguid:** There's just one word that is changed.

**Mr. Greg McLean:** Yes.

**Mr. Terry Duguid:** I'm sorry. That's what's confusing.

**Mr. Damien Kurek:** Mr. Chair, I'm curious on behalf of my francophone colleagues. The motion that was moved was moved in English and there was concern about translation and whatnot. I want to hear from those who are—

• (1450)

**The Chair:** How do we work with that? Will that be taken care of?

Yes, the legislative drafters will use the appropriate French term.

**Mr. Greg McLean:** Do we have an acceptable definition of “non-regression”? I've seen several different definitions of non-regression.

**The Chair:** That's a good question. Does anyone know specifically what that means?

Ms. May, do you have an answer to that question?

**Ms. Elizabeth May:** I raised my hand, Mr. Chair, in case you were—

**The Chair:** Can you help us with the term “non-regression”?

Can you help us, Mr. Moffet?

**Mr. John Moffet:** I don't know if we have a formal legal definition. Laura maybe able to elaborate.

The inclusion of the principle is intended to ensure that there is no reversal of environmental protection—

**The Chair:** It's so there's no backsliding, basically.

**Mr. John Moffet:** —no diminution of any environmental protection that has already been established. It doesn't set a bar that needs to be attained—

**The Chair:** Yes.

**Mr. John Moffet:** It says once we've attained a bar, we don't move backwards.

**The Chair:** Okay.

Ms. Collins, your hand was up, right?

**Ms. Laurel Collins:** Yes. I was going to answer the question.

On the government's web page there are examples. It says, “non-regression (e.g., continuous improvement in environmental protection).”

[*Translation*]

**The Chair:** Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** I would like to point out that in amendment G-4, the government will propose a definition of the principle of non-regression.

**The Chair:** I more or less understand what it means, but I think it's pretty clear, based on the answers we've been given.

Do any other members of the committee wish to speak further?

It appears not, so we will put amendment NDP-6 to the vote.

(Amendment agreed to: yeas 7; nays 4. [*See Minutes of Proceedings*])

[*English*]

**The Chair:** We go now to amendment BQ-2.

[*Translation*]

Ms. Pauzé, you have the floor.

**Ms. Monique Pauzé:** The presentation of the amendment will be brief, Mr. Chair.

With this amendment, we want to strengthen the fundamental principles for the implementation of the right to a healthy environment.

We have amply complained that, given where the right to a healthy environment is enshrined in Bill S-5, it is not a real right. Still, we are trying to strengthen its implementation by establishing it among the administrative obligations contained in section 2 of CEPA.

The wording would be:

(a.3) adhere to the principles of environmental justice—including by avoiding adverse effects that disproportionately affect vulnerable populations—the principle of non-regression and the principle of intergenerational equity;

You will also have noticed that the principle of non-regression is back.

[*English*]

**The Chair:** Mr. Kurek—

I'm sorry, Ms. Collins. Was your hand up?

**Mr. Damien Kurek:** I have a point of order, Mr. Chair.

**Ms. Laurel Collins:** It was, on a point of order.

**The Chair:** Oh, okay. I'm sorry.

Do you both have points of order?

**Ms. Laurel Collins:** I'm sure they're the same, just on the same line we amended last time.

**The Chair:** It's Mr. Kurek first, then Ms. Collins and then Mr. Weiler.

**Mr. Damien Kurek:** Thanks, Chair. I didn't want to interrupt, but if I'm reading correctly, I'd question whether or not this is in order, given the amendment that was passed just prior to this one. I'd ask, Mr. Chair, if that could be clarified.

• (1455)

**The Chair:** I will consult on that.

They are very similar, I'm told. In amendment NDP-6 there's a reference to paragraph (a.2), and in amendment BQ-2 there's no reference to paragraph (a.2). I'm told that you can add to any clause. It would be renumbered. They can't both be (a.3). I'm told it's not out of order. It may be a little repetitive, but it's not out of order.

Ms. Collins, was that your point of order too? Was it the same?

**Ms. Laurel Collins:** Yes.

**The Chair:** Mr. Weiler, was it the same point?

**Mr. Patrick Weiler:** Yes, it was the same point.

**The Chair:** We can vote on it. It's up to the committee to decide if it wants to reinforce this idea. Is there anyone else? Should we just go to the vote?

You had your hand up. I'm sorry. I didn't see it.

**Ms. Laurel Collins:** Yes, I did have my hand up.

I just want to see if maybe Madame Pauzé wants to withdraw it, given that it has almost exactly the same language except for the word “uphold”, which I think is strong, in the last amendment. I just want to check in with Madame Pauzé to see if she wants it to have the same—

**The Chair:** She said no. I heard a no.

[*Translation*]

**Ms. Monique Pauzé:** No, I don't want to remove it, as it was said that it was possible to have both.

We know that in education it is better to repeat more than once if you want people to understand, and this is even truer in politics.

**The Chair:** Yes, in politics too, you have to repeat often to get the message across.

[*English*]

We will go to the vote.

(Amendment negatived: nays 10; yeas 1)

**The Chair:** We go now to G-3.

Who would like to propose G-3?

Mr. Weiler, it's your amendment.

**Mr. Patrick Weiler:** I think we've already dealt with almost a carbon copy of the same one, and I'm not sure at this point if it would even be in order at this time.

**The Chair:** Are you saying that you would like to withdraw it?

**Mr. Patrick Weiler:** I'm not going to move it.

**The Chair:** You're not going to move it. Okay.

• (1500)

**Mr. Damien Kurek:** Mr. Chair, I would move to adjourn.

**The Chair:** Okay, it has been two hours. What's the opinion of the room?

**Some hon. members:** Agreed.

**The Chair:** You have planes to catch, places to go, people to see.

**Mr. Greg McLean:** We got 14 pages in.

**The Chair:** That's not too bad.

**Mr. Terry Duguid:** We have amendments to study.

**The Chair:** Have a good weekend, everybody. See you next week.

The meeting is adjourned.

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