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• (1605)

[English]

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

On Monday, we left off at G-14.2. We're open for debate.

Mr. Weiler.

Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you, Mr. Chair.

Since the last meeting we had, there's been a lot of communication about some of the confusion that might be created by the amendment as it is written. Again, we're talking about the necessity to do a public consultation when we're talking about new living organisms.

There's been some concern brought forward that the amendment as it's written right now will exempt farmed animals, because those would not be animals that are “native to Canada”. I just want to put that out there, and if somebody would propose a subamendment, that might be able to address that concern that people raised.

The Chair: Okay.

Yes, Ms. Thompson.

Ms. Joanne Thompson (St. John's East, Lib.): I propose a subamendment to G-14.2.

Motion number G-14.2 proposes to amend clause 39.1 of Bill S-5 by replacing line 35 on page 31 to line 15 on page 32. It will be amended by deleting the words “that in its unmodified form is native to Canada” from the motion.

The Chair: Is there any debate on it?

No? Then we'll go to a vote.

The Clerk of the Committee (Mr. Alexandre Longpré): That's 10 yeas and one nay.

The Chair: The subamendment passes, and we go to the amendment now.

[Translation]

Ms. Monique Pauzé (Repentigny, BQ): I apologize, Mr. Chair. I thought we were voting on amendment G-14.2, but we were voting on the subamendment. I agree with deleting the words “that in its unmodified form is native to Canada”, and I therefore support the subamendment.

The Chair: All right. If we have unanimous consent, you can change your vote.

Do we have unanimous consent?

Some hon. members: Agreed.

Ms. Monique Pauzé: Thank you, esteemed colleagues.

(Subamendment agreed to: yeas 11; nays 0)

The Chair: We will now go to amendment G-14.2 as amended.

Do any members of the committee wish to speak or shall we vote on it?

Ms. Pauzé, you have the floor.

Ms. Monique Pauzé: I'd simply like to explain why we don't support this amendment.

We wanted to keep what the Senate had proposed in Bill S-5, the concept of meaningful participation and the opportunity for public comments. Amendment G-14.2 really seems to sweep all of that away. So those are our reasons for voting against the amendment.

The Chair: Can we call the question?

Some hon. members: Agreed.

(Amendment as amended agreed to: yeas 8; nays 3)

The Chair: We will now continue on to amendment BQ-12.

Ms. Pauzé, you have the floor.

Ms. Monique Pauzé: With respect to amendment BQ-12, we had agreed to introduce only item (b) and what comes after that. We would like to specify what type of participation—

The Chair: I'm sorry to interrupt you. I should have notified the committee that if G-14.2 passed, amendment BQ-12 couldn't be moved due to a line conflict.

Ms. Monique Pauzé: No, Mr. Chair. On Monday, I asked the question and the clerks confirmed that, if G-14.2 passed, I wouldn't be able to move item (a) in amendment BQ-12, but I would still be able to move item (b).

The Chair: I'm sorry, you are right.

Ms. Monique Pauzé: The amendment aims to specify what form of participation there needs to be.

We made a few changes. I know that we were just sent the new text by email. Here it is: “For the purposes of subsections (1.1) and (1.2), in order to develop and shed light on the ministers' assessment, the opportunities of the public include opportunities to”—

Actually, I just remembered that I can't amend my own amendment. Therefore, I think the NDP should move a subamendment. If you will allow it, we will take two minutes to see exactly what we received.

The Chair: So I will suspend the meeting.

• (1605) _____ (Pause) _____

• (1610)

The Chair: We will now resume the meeting.

[*English*]

Ms. Mathysen.

Ms. Lindsay Mathysen (London—Fanshawe, NDP): Thank you, Mr. Chair.

I ask for your indulgence a bit here. I believe the NDP has a subamendment to BQ-12 that everybody should have received.

Under (1.3) we want to remove the words “subsections (1.1) and (1.2),” add “informing the ministers' assessment, the ministers shall provide the public with opportunities”, remove “of the public”, keep “to participate in the assessment”, and change “include” to “including”.

The Chair: Do we have this in front of us in both languages?

Okay. Is there any debate on Ms. Mathysen's subamendment?

Hearing none, we'll go to a vote.

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

The Chair: We'll go to the amendment.

[*Translation*]

Ms. Paupé, you already moved your amendment, didn't you?

Ms. Monique Paupé: Sorry, I'm confused again.

The Chair: The subamendment was rejected, so we're going back to your amendment, item (b) of amendment BQ-12.

Ms. Monique Paupé: This amendment clarifies the nature of public participation in the assessment. The intent of this amendment is to make sure that we do things in order. We'll start with consultation, then a notice will be sent out and then people will have a meaningful way to react. That's the purpose of BQ-12, which I urge members to support.

The Chair: Would anyone else like to speak?

(Amendment negatived: nays 9; yeas 2)

The Chair: We will now go to amendment PV-21, which it is deemed to have been introduced.

Ms. May, you have the floor.

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

The Green Party moves amendment PV-21.

[*English*]

No previous amendments of mine that were defeated make this one make less sense. This one makes total sense.

If you see where it fits in Bill S-5, it's following a reference to what would be public participation. It clarifies and describes that when we speak of participation and “meaningful participation”, that includes—and I am reading from the amendment, which is very clear:

the full participation of the public, including vulnerable populations, in the assessment under this Act of whether a substance is toxic or capable of being toxic and in the management of risks posed by a substance to the environment and human health.

I am hoping that this amendment will be accepted as seamlessly following the current proposed new subsection 108(1.1) in that spot on page 32.

• (1615)

The Chair: Is there debate?

Yes, Ms. Mathysen.

Ms. Lindsay Mathysen: Now I have a subamendment to the amendment.

The Chair: You have a subamendment to Ms. May's...?

Ms. Lindsay Mathysen: Yes.

Ms. Elizabeth May: I'm not entirely surprised, and thank you.

The Chair: Go ahead, Ms. Mathysen.

Ms. Lindsay Mathysen: All right.

We'd like changes to improve and strengthen the language around the importance of consultation when it comes to indigenous communities. We've heard from AFN that consultation wasn't done in their communities properly, and from other first nations leaders when it came to the genetically modified salmon.

The subamendment would read as follows—and again, I believe you all have the language—that Bill S-5, in clause 39.1, be amended by adding, after proposed new subsections 108(1.1) and 108(1.2) the following...and then in the amendment to (1.3), taking out “meaningfully in relation to participating” and replacing that with “consultation”.

I hope that makes sense.

The Chair: Is there debate?

Seeing none, we can go to a vote.

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

The Chair: The subamendment is defeated, which brings us back to the amendment.

Yes, Ms. May.

Ms. Elizabeth May: I have a small comment to my friends.

You could have voted for the subamendment to defeat my main amendment later, so that I could have had a pyrrhic victory—one moment out of many days.

Some hon. members: Oh, oh!

Mr. Greg McLean (Calgary Centre, CPC): Is that our role here? I'll ask my colleague.

The Chair: Okay, so is there debate on PV-21, or do we go straight to a vote?

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

(Clause 39.1 as amended agreed to on division [See Minutes of Proceedings])

(Clauses 40 to 44 inclusive agreed to on division)

(On clause 44.1)

The Chair: That brings us to clause 44.1 and NDP-36.

Ms. Lindsay Mathyssen: I apologize. As everybody has the language, I believe I just move it into the record.

Now I speak to it, do I?

• (1620)

The Chair: If you want to, you do.

Ms. Lindsay Mathyssen: I'm sorry, but I also haven't done a ton of clause-by-clause, so I appreciate everybody's understanding.

We have asked that lines be deleted, because we believe that ultimately taking away some of the public participation is at stake here.

The Chair: Is there debate?

Madame Pauzé, go ahead, please.

[Translation]

Ms. Monique Pauzé: We will vote in favour of amendment NDP-36, because section 44.1 of the Senate bill prescribes the public participation process.

So the goal is always to be more transparent with the public. NDP-36 goes very much in the same direction that the Senate was aiming for, and goes even further. That's why we will be voting for it.

The Chair: Thank you.

Mr. Deltell, you have the floor.

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): I have a technical question about amendment NDP-36, which I have in front of me.

The French version of the amendment states: “44.1 (1) *Le paragraphe 114(1) de la même loi est mo-*”. I understand “mo-” to mean “modifié” based on the French wording in line 20 of the bill. Where

does that leave us? It talks about paragraph (g.1), then it goes to the new paragraph (h.1). Does that mean that we leave “*difié par adjonction, après l’alinéa g, de ce qui*” as is until the end of subparagraph (ii)?

It's a very technical question. Because I'm voting against the amendment, I would like an answer. It may simply be a typographical error. As was said the other day, if we're going to vote on something, it might as well be written correctly.

The Chair: We're replacing one line. We're adding—

Mr. Gérard Deltell: It's okay, I just figured it out.

The Chair: All right.

Would anyone like to discuss it?

I see that no one does, so we will vote on it.

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

The Chair: We will go to amendment G-14.3.

Mr. Weiler, I invite you to move this amendment.

[English]

Mr. Patrick Weiler: Thank you, Mr. Chair.

I would like to put forward this motion, that Bill S-5, in clause 44.1, be amended by replacing lines 21 to 25 on page 35 with the following:

(g.1) prescribing a living organism or group of living organisms for the purpose of subsection 108.1(1);

Essentially what this amendment provides is regulation-making authority under the consultations that we just discussed as part of amendment G-14.2 and passed at the beginning of this meeting.

The Chair: Are there any comments or questions or points of debate?

Mr. McLean.

Mr. Greg McLean: I appreciate the reference to what we previously debated, but we're removing all of the current proposed (g.1), and replacing it with something that seems completely different. Should it be added to or should it be...? What are we missing here?

Proposed new paragraph (g.1) right now says:

amended by adding the following after paragraph (g):

(g.1) prescribing processes for meaningful participation in (i) an assessment under section 108, and

(ii) the determination of whether to grant a waiver requested under subsection 106(8);

Do you want to take those lines on public participation out and just talk about prescribing a living organism or group of living organisms for the purpose of new subsection 108(1)?

Could you give us some context, Mr. Weiler?

• (1625)

Mr. Patrick Weiler: This is for prescribing regulations for this consultation, but I'll defer to the officials so they can speak to it a bit more.

Mr. John Moffet (Assistant Deputy Minister, Environmental Protection Branch, Department of the Environment): In amendment G-14.2 as amended, there's a new requirement to consult any interested parties with respect to a prescribed living organism or group of living organisms.

This is the corollary amendment, which would give the government the authority to prescribe what those living organisms are to which this consultation obligation would apply. Otherwise, the consultation obligation is meaningless. You actually have to list the living organisms by means of regulation, and this provision we're discussing now gives authority to the regulatory authority to list those organisms.

Mr. Greg McLean: You're telling us that the words we're extracting from clause 44.1 are already covered by amendment G-14.2, as far as public consultation goes.

Mr. John Moffet: No. I'm sorry, but the provisions that are struck here are not the subject of amendment G-14.2. I think they would have been the subject of authorities that were proposed but defeated just a few minutes ago, so now this amendment is limited to only the new provision that was passed a few minutes ago.

I hope that's clear.

Mr. Greg McLean: Can you walk me through that one more time? I'm trying to follow what you're saying here.

Mr. John Moffet: A few minutes ago, the committee discussed and defeated proposed amendments with respect to meaningful public participation. That term has now not been introduced into the bill, so we do not need regulatory authority with respect to that term.

What was passed earlier in the session was new authority or a new requirement for ministers to consult interested persons with respect to prescribed living organisms. That's what was passed. Now we need the authority to prescribe those living organisms.

The Chair: Okay. That's pretty clear. That authority wasn't in the bill before. That's what you are saying.

Mr. John Moffet: That's correct, Mr. Chair.

The Chair: Thank you.

Ms. Mathysen, you had your hand up.

Ms. Lindsay Mathysen: Again, I'm trying to catch up a lot, but ultimately the government or this committee has taken out that idea of public participation or indigenous and full consultation, and has now replaced it or is just leaving it to "interested parties". Is that correct?

I see that as problematic.

The Chair: Is that correct?

Mr. John Moffet: There are just a couple of clarifications.

The committee made the decision.

Ms. Lindsay Mathysen: That's a confirmation of that, but I would argue that ultimately, you may believe you're including everyone, but that's not always the case. That's always the thing, in terms of indigenous consultation. They've been left out so frequently that I'm surprised no one else sees continuing to do that as a problem.

Mr. John Moffet: Could I make one other interjection, just to clarify the term?

If we go back to G-14.2, it introduced the obligation on the ministers to consult "any interested persons". That's standard language that we've used that already exists in CEPA. It covers any person who is interested.

I'm not taking issue with you in terms of past practice. In terms of legal obligations, the legal obligation is to consult with any interested persons. In addition, the bill now includes the obligation to consider impacts on "vulnerable populations", including indigenous communities, in making various decisions under the act, including risk assessments and risk management.

Again, we'll see how it plays out in practice, but in terms of legal obligations, I want to reassure the committee members that this is broad authority that includes all interested persons.

• (1630)

Ms. Lindsay Mathysen: Again, this isn't against those trying to perhaps offer clarification. However, in terms of government, Liberal colleagues, the removal of that "public participation"... It's my understanding that this committee heard specifically from the AFN and indigenous communities that they did not feel included...as broad as you may feel that the language is.

[Translation]

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

Ms. Monique Pauzé: Mr. Moffet, please confirm something for me: Doesn't amendment G-14.3 take us back to what we had in the Canadian Environmental Protection Act, 1999?

[English]

Mr. John Moffet: Amendment 14.1 actually amends CEPA, so it adds an obligation to the existing statutory requirements. It's not just what we currently have in the statute. This adds a new obligation to consult interested persons with respect to these decisions.

[Translation]

Ms. Monique Pauzé: This obligation therefore stems from amendment G-14.2. However, it seems to me that there's no mention of a waiver in this amendment. Isn't that basically what the Senate is adding to this bill?

[English]

Mr. John Moffet: This afternoon, this committee passed government amendment 14.2, which adds an obligation on the ministers of health and environment in new section 108.1, subsection (1), to “consult any interested persons” with respect to the assessment of information in respect of vertebrate animals and any living organisms prescribed by regulation. This is a new obligation that this committee created this afternoon in CEPA.

The authority we're now discussing is just the authority to create the regulation that lists the organisms about which that consultation obligation applies.

[Translation]

Ms. Monique Pauzé: Then again, in the assessments, the Senate added the waiver issue, but this isn't in amendment G-14.2.

Amendment G-14.3 therefore weakens clause 44.1 of the bill and the proposed subsection 114(1)(g.1) it wants to add to the act, because that is not covered by amendment G-14.2. Is that correct?

[English]

Mr. John Moffet: That's correct.

[Translation]

The Chair: Thank you.

Go ahead, Ms. Mathysen.

[English]

Ms. Lindsay Mathysen: I just want to ask a further question.

When you spoke specifically about all persons being consulted or whatever, is this in line with the obligations under UNDRIP and that legislation as well?

• (1635)

Mr. John Moffet: I apologize. I don't think I'm able to comment.

[Translation]

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

Ms. Monique Pauzé: Mr. Moffet, in light of your explanations, could I propose a subamendment to amendment G-14.3?

That would involve replacing the words “by replacing” with the words “by adding”, which would add what the amendment proposes to what is already in clause 44.1 of the bill.

The Chair: We will suspend for a few minutes to look at that.

• (1635)

(Pause)

• (1640)

The Chair: We are back in session.

The subamendment is in order.

Ms. Pauzé, is that what you want to propose?

Ms. Monique Pauzé: Yes, Mr. Chair.

I'm not sure whether that should be forwarded to committee members. I'm hoping the clerk would do that.

The Chair: What you want to do is change one word.

Ms. Monique Pauzé: I propose replacing the word “replacing” by the word “adding”.

[English]

The Chair: Basically, we're saying that clause 44.1 be amended by saying, instead of “replacing lines 21 to 25”, “adding after line 25”. We're taking out “replacing lines 21 to 25” and putting in “adding after line 25”. Then we add what Ms. Pauzé wants to add, which is going to be called (g.2).

[Translation]

Ms. Monique Pauzé: Yes, that's it, precisely.

[English]

Mr. Terry Duguid (Winnipeg South, Lib.): Mr. Moffet, can we get your comment on this?

Mr. John Moffet: I apologize. I was just trying to follow the implications.

In a previous session, the committee approved G-14.1, I believe, which required ministers to publish, as soon as possible, a notice stating the name of anybody granted a waiver. The waiver process is intended to complement the risk assessment process to assess new substances, which is a time-bound process. That's a process managed by risk assessment officials.

This amendment, as I understand it, would interject an implied expectation that the government develop regulations prescribing processes for meaningful public participation in decisions about granting a waiver. That seems to contradict the obligation that was passed to grant waivers “as soon as possible”.

We're wrestling with the implications.

The Chair: Would you like some more time to reflect on it?

Mr. John Moffet: I apologize to the committee. I did not anticipate this. We'd appreciate coming back to that, rather than prolonging this discussion while everybody stares at us.

• (1645)

Mr. Terry Duguid: We can't come back. We'd have to stand it.

The Chair: We'd have to stand it, or we could just vote on it.

A voice: What a novel concept.

The Chair: Do you wish to take a pause?

Mr. Greg McLean: I think I have to go back and work through the rest.

We've stood several clauses before. We can come back to this, as well as the others, with a full understanding of the implications. Would that be okay?

The Chair: Go ahead, Mr. Weiler.

Mr. Patrick Weiler: I don't want to rush through this, necessarily, and vote on it before we've had the proper time to think about it.

I see some issues with bringing this amendment forward, because it gives the ability to prescribe regulations based on a part of the act we've already removed. I'm not sure how that would fit into the act as it's written right now.

When we talk about meaningful participation... There is a process going on, right now, for making regulations for new living organisms. The process of ensuring we have meaningful participation will be prescribed through that regulation, so there might be a better place to have that definition, rather than here. It might result in something of an inconsistency in how the act's written.

The Chair: I have Mr. Duguid and—

Mr. Terry Duguid: Mr. Chair, why don't we take a short pause to allow a little time?

The Chair: Then, when we get back, I have Ms. Mathysen.

Okay, we'll take a short pause.

• (1645) _____ (Pause) _____

• (1645)

The Chair: Do the officials wish to speak?

I have Ms. Mathysen next.

I'm sorry. I have to do this every time we start.

Ms. Lindsay Mathysen: I had to wait for the hammer.

I would argue that a much longer time period is potentially required. There have been questions that haven't been answered. My questions on the amendment weren't answered. Providing time to get adequate answers would be my go-to. I suggest that's what we move towards.

• (1650)

The Chair: Do you propose standing the whole clause?

Ms. Lindsay Mathysen: Yes.

The Chair: We need unanimous consent to stand it. We don't have unanimous consent.

We can vote on the subamendment.

Mr. Terry Duguid: Do we want to hear from Mr. Moffet?

The Chair: What is the question for Mr. Moffet, though? I forgot.

Mr. Terry Duguid: It was his reflection on the subamendment, which seems to reverse a decision we've already made.

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

Mr. John Moffet: I'm afraid I'm just going to repeat the position I articulated earlier in discussion. I think we agree that the issue here is with respect to the reintroduction, via section 44.1, of proposed subparagraph (g.1)(ii) "the determination of whether to grant a waiver". Therefore, "prescribing processes for meaningful public participation in the determination of whether to grant a waiver" would appear to contradict the obligation that was created earlier this week to publish decisions about waivers as soon as possible.

It also runs counter to the basic process for or purpose of a waiver, which is to support risk assessments and to ensure that risk assessors have access to all the information needed to make their science-based decisions. This is not a public participation process. This is a science-based process.

The Chair: We're talking about Madam Pauzé's subamendment, aren't we? We're saying it's contradicting something in the bill. Can we just vote on this?

I have Mr. Weiler and then Madam Pauzé.

Mr. Patrick Weiler: I just thought I might say something with regard to Ms. Mathysen's comment. She raised some concerns about the AFN and consultation with indigenous peoples as part of this. I would just refer to the paragraph proposed for the preamble of CEPA, which says that "Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent". Given that, when we're talking about interested persons in this, I don't see how that would not include consultation with indigenous peoples.

[Translation]

The Chair: Go ahead, Ms. Pauzé.

Ms. Monique Pauzé: Mr. Chair, I'm not nearly as qualified as the officials who are here to help the committee, but I think that amendment G-14.3 seeks to change subsection 114(1) of the act, which has several subsections. It does so by amending clause 44.1 of the bill, which authorizes the Governor in Council to prescribe processes for meaningful public participation in the circumstances identified in subparagraphs (i) and (ii).

As amended by my subamendment, amendment G-14.3 would add a new paragraph to subsection 114(1) of the act, saying that the Governor in Council may also "prescribe a living organism or group of living organisms for the purpose of subsection 108.1(1);" That would be new paragraph (g.2), I believe.

The Chair: I'm being told that there seems to be a contradiction here.

Ms. Monique Pauzé: I don't understand. I do not see the contradiction. I am talking about subsection 114(1) of the current act, but I'm being referred to clause 39.1 of the bill, on which we voted earlier.

[English]

The Chair: Madam Pauzé doesn't see the contradiction. Could you just go over where the contradiction is?

Mr. John Moffet: The section we're amending now is not a section that creates a statutory obligation to consult. The section we're amending now is a section that would give the government the authority to regulate how to consult. The obligation to consult would have been contained in the amendment that was discussed earlier and defeated.

• (1655)

The Chair: That's the difference.

[Translation]

Ms. Monique Pauzé: Mr. Moffet, my understanding is that G-14.2 pertains to clause 39.1 of the bill, which would add new section 108.1 to the act.

Now, however, I'm in a completely different section. I don't want to be a broken record, repeating the same arguments, but I don't understand why it doesn't work even when we're talking about an altogether different section.

When it comes to the clause we are talking about now, 44.1, the Senate added two roles for the Governor in Council. We are adding a third, plain and simple.

Personally, that's how I see it, but as I said earlier, I don't have your expertise.

[English]

The Chair: Mr. Moffet, do you understand Madam Pauzé's point?

Mr. John Moffet: Yes.

You're correct, Madam Pauzé. These are separate provisions, but sections 106 and 107 create statutory authorities. Under section 106 as amended, "The Minister shall, as soon as possible...."

I could read it in French:

[Translation]

"The Minister shall, as soon as possible in the circumstances, publish in the Canada Gazette a notice stating the name of any person to whom a waiver is granted and the type of information to which it relates."

[English]

The minister must publish as soon as possible the name of any person to whom a waiver is granted. That's section 106.

Section 108 is authority to develop regulations to explain how the government will discharge its obligations under various other parts of the act, including section 106. The contradiction we're pointing out is that section 106 requires the minister to publish the name as soon as possible.

The proposed amendment that you've put on the table is to create regulations to prescribe meaningful public participation in that process. This is not a public process. This is a process that, by law, has to be done as quickly as possible and is a science-based decision. It's hard to have meaningful public participation in a science-based decision that has to be done as quickly as possible. That's the difference.

The Chair: We'll go to Ms. Mathysen now.

[Translation]

Ms. Mathysen, please be quick.

[English]

Ms. Lindsay Mathysen: Mr. Moffet, if I'm understanding correctly, you said that the obligation of consultation has already been removed. It was voted down in 39 point something.

Mr. John Moffet: Where was it? I'm sorry; I'm getting lost here.

BQ-12 would have required the minister to ensure that the public is provided with "notice of their assessment and opportunities to participate meaningfully in it." That had to do with participation in the assessment itself. That was defeated.

However, in government 14.2, this committee created an obligation on the ministers to "consult any interested persons before the expiry of the period for assessing that information" in respect of a vertebrate animal or a list of living organisms.

The main purpose of this new regulatory authority that the government introduced under G-14.3 is to give authority to create that list of living organisms by means of regulation.

• (1700)

Ms. Lindsay Mathysen: In G-14.2, the limited part was the public participation. Ultimately, while you've given the obligation to create the list or make it known that there is this list, that opening up to public participation has not happened, so it's hard for people to hear about it.

In addition, I would also note Mr. Weiler's point that, ultimately, within the proposed preamble there may be a reference to "free, prior and informed consent" for indigenous people. However, we all know that something in a preamble doesn't have as much meaning as if it's in the legislation.

The removal of those references, I would say, still weakens that in terms of what we mean by adherence to the United Nations Declaration on the Rights of Indigenous Peoples and the commitment this government made to follow it.

Mr. John Moffet: I have to apologize. Let's go through it line by line.

Madam Pauzé's amendment would create authority to develop regulations for meaningful public participation for two processes.

One is for the assessment under section 108. That process under section 108, by law, requires the ministers to consult "any interested persons", so this committee has created the obligation to consult interested persons—

Ms. Lindsay Mathysen: There's nothing about participation—

Mr. John Moffet: No. It's to "consult any interested persons". There is a clear obligation to consult interested persons, including indigenous people and including vulnerable populations.

The second part of Madam Pauzé's amendment, however, is where the contradiction arises, and that is to create an obligation for an authority to develop regulations, prescribing processes for meaningful public participation and the decision about whether to grant a waiver.

We dealt with that in the committee when you weren't here. The amendment to CEPA that was created earlier this week requires the minister to publish waiver decisions as soon as possible.

I'm pointing out that there's a contradiction there between meaningful public participation in that process and the statutory obligation to publish that list as soon as possible. There's no contradiction with—

The Chair: Yes. I think that clarifies it.

Mr. John Moffet: —the first obligation about assessments under section 108, and I think I misled you in that regard.

The Chair: It makes sense to me, but go ahead, Madam Pauzé.

[*Translation*]

Ms. Monique Pauzé: Mr. Moffet, if I understand correctly, it would take too long to consult on assessments and the determination of whether to grant a waiver because G-14.1 added the obligation to publish “as soon as possible in the circumstances”. That's what I took from your answer, but I have to tell you that I don't agree.

We discussed BQ-12 earlier, and it was defeated. All the Senate's proposed amendments to the bill regarding public participation were defeated.

I imagine that this subamendment will be defeated as well, but the fact remains that new paragraph 114(1)(g.1) proposed in the bill prescribes specific aspects of consultation.

You talked about publishing as soon as possible. The process would be conducted as soon as possible while allowing everyone to participate.

I'll leave it there, Mr. Chair.

[*English*]

The Chair: Ms. Taylor Roy, are you okay?

Ms. Leah Taylor Roy (Aurora—Oak Ridges—Richmond Hill, Lib.): I'm okay.

The Chair: I don't see any further debate. Shall we vote on Madam Pauzé's subamendment?

(Subamendment negatived: nays 9, yeas 2 [*See Minutes of Proceedings*])

The Chair: Now we're voting on amendment G-14.3.

(Amendment agreed to: yeas 9, nays 2)

The Chair: Shall clause 44.1 as amended carry? On division?

(Clause 44.1 as amended agreed to on division)

(On clause 45)

The Chair: This brings us to clause 45 and PV-22, which is deemed moved.

Go ahead, Ms. May.

• (1705)

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

I regret that the last session didn't give me any opportunity to comment on confusion around whether “interested persons” will include indigenous peoples or the public, but I'll move straight to what I'm allowed to speak about, which is amendment PV-22.

It is, again, in a sequence of amendments related to trying to stop the creation of two lists where the act has, since 1988, had one list in the schedule of toxic substances.

Again, given the rules that this committee passed—the only reason I'm here is the motion you passed—I'm not allowed to remove my own amendments. That's why this one is in front of you. It doesn't make any sense any longer, because all my previous amendments have already been defeated on this point.

Thank you.

The Chair: Thank you.

Shall we vote?

(Amendment negatived: nays 9; yeas 2)

(Clauses 45 to 49 inclusive agreed to on division)

(On clause 50)

The Chair: We're on G-14.3.1.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): I'm sorry. Could you say the number again?

The Chair: It's G-14.3.1.

Mr. Damien Kurek: In which package is it?

The Chair: We're at clause 50 now. What I have in front of me is that the government is going to present G-14.3.1.

I don't know. That's what it says—“.3.1”—but should it be “.4”?

Go ahead, Ms. Thompson.

Ms. Joanne Thompson: Thank you.

I'm sorry. It's a slightly different number here. I apologize for the inconvenience.

It proposes that Bill S-5, in clause 50, be amended by replacing lines 14 to 16 on page 39 with the following: “(2) A request for confidentiality shall be submitted, with reasons addressing the criteria set out in paragraphs 20(1)(a) to (d) of the Access to Information Act, in writing and contain any supplementary information that may be prescribed.”

• (1710)

Mr. Damien Kurek: Thanks, Chair.

The agenda that I printed off was, I believe, the last one sent, and I don't have that particular clause. It goes directly to NDP-37, which is noted as new in the package I have here, but we don't have G-14.3.1.

[*Translation*]

The Chair: We have the amendment in both official languages. We'll take a moment to make copies and hand them out to everyone.

The meeting is suspended.

• (1710) _____ (Pause) _____

• (1710)

The Chair: We are resuming the meeting.

We are going to distribute copies of the amendment, but the clerk should have sent it out by email as well. You should have received it.

You've already moved the amendment, Ms. Thompson, but would you like to explain it?

[*English*]

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): On a point of order, Mr. Chair, as I'm substituting in, I don't get the emails.

The Chair: We'll get a hard copy for you, and apparently a copy was sent to you electronically too.

Go ahead, Ms. Thompson, if you want to explain it.

Ms. Joanne Thompson: Thank you, Mr. Chair.

I support this motion.

We've heard from witnesses that a presumption of confidentiality exists when requests are made under section 313 of the act. There is concern regarding transparency in CBI claims.

CEPA does not create a presumption of confidentiality per se, but rather requires that information for which there has been a CBI claim not be disclosed unless permitted.

Following a claim for CBI under CEPA, the department will not make any determination until there is an intention to publish the information. At the time of making the determination, the department will look into the CBI.

Currently, and as a matter of policy, the department asks that persons requesting confidentiality under section 313 provide a rationale regarding the nature of the confidentiality, and points at the types of legitimate CBI outlined under section 20 of the Access to Information Act, for example, trade secret, material financial loss, or impact on contractual negotiations in some cases.

• (1715)

The Chair: Okay. Are there any other comments or questions?

I see Mr. Garrison.

Mr. Randall Garrison: Thank you, Mr. Chair.

I have a point of clarification.

Since the Liberal amendment proposes to amend clause 50, I'm asking advice from the chair on whether that would allow NDP-37 to go forward. It's an amendment to the same section, although it's a different portion. I'm just asking for a clarification.

The Chair: I have no note to the contrary. Nothing tells me that you can't go ahead with the new NDP-37. There's a new NDP-37, I believe.

What's the new NDP-37?

Mr. Randall Garrison: Mr. Chair, I just know that in some circumstances, once you've amended a section, it's not possible to make further amendments to the section.

The Chair: Yes, I agree, but they usually tell me if that's going to cause a problem.

Mr. Randall Garrison: I'm asking you to tell me.

The Chair: I'm telling you that they haven't told me it's going to cause a problem, so we can assume it won't.

Mr. Greg McLean: We can assume....

The Chair: Yes, we can assume. Assumptions can be wrong, but we'll cross that bridge when we get there.

As I understand it—the clerks or anyone else can correct me—you would be right if we were dealing with the previously submitted NDP-37. However, there is a new NDP-37, which would not include a section that was in the old NDP-37. Therefore, there won't be a problem; there won't be a conflict.

Mr. Randall Garrison: Thank you, Mr. Chair.

The Chair: Okay.

Are there any more comments on G-14.3.1?

Mr. Kurek.

Mr. Damien Kurek: Thank you very much.

My other committee is access to information and ethics. I could make a political joke here, but I'll refrain.

The Chair: That's a good idea. No political jokes.

Mr. Damien Kurek: None whatsoever.

It looks to me that this amendment is simply clarifying the need for compliance with the Access to Information Act, as would be the case with any federal legislation. I'm asking whether the officials could clarify—talking about assumptions—whether that assumption is in fact correct: to ensure that any waiver that would be granted fits the allowances laid out in the Access to Information Act, specifically section 20, as outlined in the amendment.

Mr. John Moffet: That's correct. I think it goes beyond that. It codifies the current policy of both departments to request a set of information from applicants in order to make the determination about whether the decision will be aligned with the Access to Information Act. It's a legal codification of an existing policy, intended to ensure alignment of the access to information regime in CEPA with the Access to Information Act.

• (1720)

Mr. Damien Kurek: Thank you.

To clarify, does the current CEPA have outlined within it the obligation under the Access to Information Act...or is this a new addition that would ensure it's noted that it's legislatively compliant?

Mr. John Moffet: There is a cross-reference in the statute. This provision has to do with the information that is requested from applicants, so it's a further reinforcement of that linkage.

Mr. Damien Kurek: Okay. Thank you.

The Chair: Is there anyone else before we vote?

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

The Chair: It is adopted.

We then have new amendments NDP-37 and BQ-13, and I'm told they are very similar.

We will go to new amendment NDP-37.

Ms. Laurel Collins (Victoria, NDP): Mr. Chair, I'm wondering if we could try swapping out to see if anything has changed, given that halfway through a previous meeting the audio changed—

The Chair: Can the interpreters tell us if anything has changed?

Nothing has changed. I'm getting the thumbs-down again, so nothing has changed, but what I'm understanding, Ms. Collins, is you would like to present this new NDP—

Ms. Laurel Collins: I would very much like to present this and have it—

The Chair: We have only four minutes left.

Yes.

Mr. Terry Duguid: Mr. Chair, this would probably take up our last four minutes, but could you reread this aloud? There's an old version and there's a new version, and I'm a little confused.

The Chair: Sure. The old version—

Mr. Terry Duguid: Mr. Chair, if I could, I think it might be appropriate to see the clock at 5:30 and—

The Chair: Before we do that, though, can I ask that we make sure that this new amendment NDP-37 has been distributed to everybody? That way, when we get to the next meeting...

[*Translation*]

Was the amendment distributed?

An hon. member: No.

[*English*]

The Chair: We need the new amendment NDP-37 in both official languages, Ms. Collins. Can you get that to the committee?

• (1725)

Ms. Laurel Collins: Absolutely.

[*Translation*]

The Chair: There are three versions of NDP-37, but we are talking about the third version, which I don't think the committee members have because we only found out about it during the meeting. It's quite likely, then, that they don't have it.

We have two weeks to get the amendment translated and sent to the clerk, who will then send it out to the committee members.

On that note, I suggest we adjourn the meeting. I hope everyone enjoys their two weeks off in their ridings. Get some rest if you can.

Mr. Gérard Deltell: Mr. Chair, they aren't two weeks off. They are two weeks of engagements and activities in the community and the riding. We'll be meeting with our constituents. Shame on anyone who thinks we will be enjoying time off.

The Chair: You're absolutely right. I take back what I said.

Have a good weekend everyone.

• (1730)

The meeting is adjourned.

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