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—
Chair

Mr. Bob Mills

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• (1530)

[English]

The Chair (Mr. Bob Mills (Red Deer, CPC)): Order, please.

Mr. Warawa.

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

I'd like to begin by making a motion, and then speak to it.

In view of the fact that the committee has not completed a proper economic analysis of Bill C-377, including the impact to the Canadian economy and the Canadian consumer in meeting the proposed targets, and that the committee has not properly studied or received guidance with respect to the required amendments dealing with the many constitutional and jurisdictional issues, I therefore move that, in accordance with Standing Order 97.1(1), the committee not proceed further with Bill C-377.

Hon. Larry Bagnell (Yukon, Lib.): A point of order.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Do you not have to have 48 hours notice of motions?

The Chair: You do, but this is on the bill that's under discussion, Mr. Bagnell, so you can make a motion on this bill. This is what the agenda states, that we're on Bill C-377.

Yes.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): I would like to speak.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: We've heard this from the Conservatives in their questioning and their considerations of the bill. Call the question. We've heard the arguments many, many times. Other than seeking to filibuster or delay, for the committee not to waste its time....

The Chair: You have to let Mr. Warawa speak to his motion so that everybody understands what he's presenting.

Mr. Nathan Cullen: I encourage brevity.

Mr. Mark Warawa: Thank you, Chair.

First of all, I'd like to point out that we heard from the witnesses. The bill has no plan, no substance. It's missing that, and therefore it's a meaningless bill. Also, the bill gives the government no authority to spend any money to have a plan of action, further evidence that it's an empty, hollow bill. Many of us have heard of greenwashing. This is a prime example of greenwashing.

Mr. Chairman, the NDP refused to cost the bill. They even failed to consult with constitutional experts before they wrote the bill. I'd like to refer to the testimony of the author of the bill. When Mr. Layton was here I asked him who prepared the bill, and he shared that Pembina was involved with the writing of the bill. And I asked him about costing the bill. The fact is, I asked every group of witnesses if it had been costed, and Mr. Layton said the bill should be costed. The fact is he said the government should be costing the bill. And he wasn't quite sure what the bill involved, because it was Pembina, he testified, that had—

Mr. Nathan Cullen: Chair, a point of order.

The Chair: A point of order, Mr. Cullen.

Mr. Nathan Cullen: Thank you.

In his impassioned defence, Mr. Warawa is putting words into the mouths of witnesses who have been before the committee. If he's seeking to destroy efforts to amend the bill... Many here on the committee have earnestly done their homework. I notice this government has done none of that; they've chosen not to do their work in making the bill better, which I thought was the intention and nature of this committee. If he's going to start smearing witnesses and allege things they said that they did not say, I don't think it behoves his character or the work of this committee.

I'd suggest that if he has considerations and changes he'd like to make to the bill that we proceed to the clause-by-clause, which is the intention of this committee. If he's moving spurious motions just simply to waste time, while that may be his privilege, I don't think it benefits taxpaying citizens.

• (1535)

The Chair: The position I'm in, Mr. Cullen, is that, in terms of the legality of the motion, it is in order. He does have a right to speak to that motion, and there's not much I can do, as chair, to change that.

Mr. Nathan Cullen: You may not have been listening as he was going through his so-called evidence, but if he's trying to improve this bill, then I think it's important that he move those amendments, and make them friendly or otherwise.

The Chair: I'll let this proceed, Mr. Cullen, and listen to the comments.

Mr. Harvey.

[Translation]

Mr. Luc Harvey (Louis-Hébert, CPC): His comment was not a point of order, it was an argument. What I am doing now is a point of order.

[English]

The Chair: Mr. Warawa, please continue.

Mr. Mark Warawa: Thank you.

I appreciate the concerns expressed by Mr. Cullen. I was actually just about ready to quote Mr. Layton, so I'd like to continue to do that. He said, in his testimony, "I think of the people who thought about connecting one end of the country to another with a railroad." This is an analogy he used to help us understand what his vision was for Bill C-377. He went on to say:

Do you think they had it all figured out as to how they were going to pull it off? Do you think they had figured out how they were going to pay for it all? Did they do it perfectly? The answer to all those things would be no, but they had a dream about where they wanted our country to be, and they took on the impossible and they focused on it.

What Mr. Layton has admitted is that he has no idea how it's going to be paid for. He has no idea on the substance of the bill. He even describes it as an impossible dream. And the Liberals break out in song.

We heard in testimony after testimony that this bill should be costed, and there should be an impact assessment. We heard that from every group of witnesses, including Mr. Layton himself. He said that the government should cost it.

The next witness after that was Mr. Bramley, and Mr. Bramley also said that it should be costed. When he was asked about it being costed, he said, "To my knowledge, that hasn't been done, and it needs to be done", referring to the costing.

And then it was actually Mr. Vellacott who said, "So you personally have not done any of the economic modelling that specifically focuses on Canada?", to which Mr. Bramley answered, "No".

So we're not making up anything here. It's well documented in the blues that the bill hasn't been costed. It's void of substance. It will not stand a constitutional challenge. I believe it was even a member from the Bloc who said that this bill needs to be totally rewritten.

One of the greatest hypocrisies that the NDP could put on us is if they wanted to substantially amend their own bill, because a substantial number of witnesses who came before our committee said it was fraught with problems, and I've just touched on a few. So they brought to committee a bill that is poorly written, not costed, which will not stand up constitutionally, and now they want to totally rewrite the bill.

The motion I made is relevant because I think the bill needs to be totally redone before it comes back here.

I personally believe that Canada does have a turning-the-corner plan, which is supported by Parliament. It was part of our Speech from the Throne, and it was supported by this government and this Parliament. That is the Canadian plan, the turning-the-corner plan, which has very definite targets of absolute reduction of 20% by 2020, and 60% to 70% reductions by 2050. And those are the toughest targets in Canadian history.

During the hearings on Bill C-30 the NDP tried to write in medium- and long-term targets that appeared in Bill C-377. The

Liberals opposed them by saying those targets were too tough. You can check the record.

The fact is, I have a quote from Mr. McGuinty here saying,

I think we'd have some difficulty, Mr. Chair, in increasing this number for fear that it would not fit with so many of the achievable outcomes that we heard about from different expert witnesses.

And then he went on to say, "We do not accept the friendly amendment."

That was on March 27 of last year in the committee studying Bill C-30.

I have another quote here, and it was from Mr. Godfrey. On March 27 he said,

Like previously, we certainly wish to be ambitious, but also we want to be realistic. But concern and prudence for giving ourselves a bit of room to manoeuvre, as we have done on the 2020 target, means that we can't accept this, much as we'd like to, as a friendly amendment.

He was referring to the amendment from the NDP. That was again at the committee studying Bill C-30 on March 27.

• (1540)

Yet four weeks later, on April 30 of last year, the Liberals voted to support those targets in the House of Commons. Do they now disagree with the targets that they wrote into Bill C-30? I'm not sure. There appears to be a flip-flop from the leader of the opposition and also from his environmental critic.

Mr. Chair, I want to talk about the NDP hypocrisy on the environment. Just what is the position of the NDP leader in short-, medium-, and long-term targets on greenhouse gas reductions?

Recently Mr. Layton and the NDP have supported two different positions: the targets they wrote with the Liberals into Bill C-30, which could have cost Canadian families and businesses 275,000 jobs and sent gasoline prices soaring to \$1.60 a litre, and now even tougher targets on this bill that would harm the economy even further. The NDP are being hypocritical by supporting two different positions. When will they come clean with Canadians about their real position on greenhouse gas emission targets?

Mr. Chair, the turning-the-corner plan is the first time ever that the federal government focuses on mandatory requirements for industry to reduce greenhouse gases and air pollution. We will take immediate action by implementing mandatory targets on industry so that greenhouse gases begin to come down. The turning-the-corner plan takes us in the right direction.

Another relevant piece I would like to introduce is a letter addressed to you, Mr. Chair, from Sheila Fraser. This is in response to Bill C-377 and what the NDP did in drafting this poorly written bill. This is the response from Sheila Fraser:

I am writing to provide you with comments on Bill C-377, which I understand is currently before your committee. In preparing this letter, I have consulted with the Interim Commissioner of the Environment and Sustainable Development, Mr. Ron Thompson.

Although we appreciate the confidence shown in the work of our Office by the drafters of the bill, we do have serious concerns with section 13. Put simply, this section would require the Office of the Auditor General of Canada to undertake two types of work that are inconsistent with both its legal mandate and accepted practice for Canadian legislative auditors.

First, paragraph 13(l)(a) would require us to determine the likelihood of certain measures attaining results in the future. Our audit mandate is different and requires us to examine and report on what has happened, rather than what may or may not happen.

Second, paragraph 13(l)(b) would require us to give policy advice to the Minister or the Governor in Council. This is inconsistent with our legal mandate and accepted practice for Canadian legislative auditors. Our role is to provide Parliament with objectively determined and credible audit findings.

I hope that these comments will be helpful to you and your committee. I would be pleased to elaborate on them at your convenience.

I think that might be helpful.

I'd like to share with the committee a few of the other comments. As I said, I asked each group whether there should be an economic analysis on this, and every group said yes.

• (1545)

These are some of the comments that I have highlighted from Professor John Stone:

I certainly have been very encouraged by the words that I've heard from the present government, Mr. Warawa, of their intentions to tackle the issue.

He was referring to our turning-the-corner plan.

Of course, we need to cost whatever plans they have from whatever party we have and in whichever country we're talking about. That's only good public policy. I will just have to assume that whatever plans are presented to Parliament and to the Government of Canada and to Canadians are properly costed. Yes, I agree with you.

So there's another example of Dr. Stone saying that it has to be costed.

We've heard from Jack Layton that it wasn't costed and that he wants it costed. He's recommending that it be costed.

So we're really putting the horse before the cart by going ahead without it being costed.

I brought this up a number of times, Chair, that it should be costed, and yet we're moving ahead. They're wanting to move ahead. It takes time to do this properly, but no, there's not an appetite to do this properly. They want to greenwash this bill.

Dr. Stone went on and said the following:

I don't see that Bill C-377 is necessarily inconsistent with where our present government is going, nor indeed with the aspirational statements I've heard from other parties. My sense is that slowly—and I emphasize slowly—we seem to be coming to a consensus amongst parties in Canada that in fact this is an issue we cannot afford not to tackle. I've been encouraged by what the present government is saying in its levels of targets and the like.

So we have, again, support for our turning-the-corner plan. Parliament has taken a position that the targets of 20% reduction, absolute reduction, by 2020—and these are post-Kyoto, post-2012 targets—and 60% to 70% reduction by 2050 are realistic and achievable, and they have been costed. The position of Parliament is that this is the plan of Canada.

For the NDP to introduce Bill C-377, a bill that hasn't been costed, that will not stand up constitutionally, that has no policy attached to it.... These are just vague, meaningless targets. The bill has to be totally rewritten. We've heard that it would give the federal government sweeping and unlimited powers over the provinces, which would raise real concerns provincially and constitutionally.

So it's a poorly written bill. I think my motion that it not proceed, which would result in it going back to the House, is the right motion.

I look forward to other comments, particularly on the costing aspect and the constitutionality of this.

The Chair: Mr. Harvey, then Mr. Vellacott.

[Translation]

Mr. Luc Harvey: I would like to hear my colleagues opposite. So I am going to waive my right to speak and I will do so after Mr. Vellacott because I want to hear their opinion.

[English]

The Chair: Well, I'm not seeing any comment, Mr. Harvey, so I would suggest....

[Translation]

Mr. Luc Harvey: Mr. Bagnell wanted to speak.

• (1550)

[English]

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I'm just wondering if we could call the question.

The Chair: I think I have to hear Mr. Vellacott first. Mr. Harvey has passed....

I need to go in the order that you ask, and the order is Mr. Harvey, Mr. Vellacott, and Mr. Bagnell.

[Translation]

Mr. Luc Harvey: To follow up on what my colleague Mark said about Bill C-377, I think that we have an important responsibility to establish the impact of Bill C-377 on the economy.

When Ms. Donnelly testified, hers was probably the only technically reasonable study that was not challenged by anyone on the committee. Ms. Donnelly stated that, for a province like Saskatchewan, the costs would be close to 99% of its gross domestic product. When we are talking about 99% of GDP—although I have some doubt as to the accuracy of Ms. Donnelly's figure—and when we even want to proceed without studying the matter, I have to say that it is worthwhile to determine the real costs that Bill C-377 will entail.

Bill C-377 calls for a reduction in greenhouse gas emissions of 25% from 1990 levels. That is not 25% of present levels, it is 52%. At this point, we are trying to be constructive and to see what that would mean for the Canadian economy. For me, economic responsibility is of the highest importance.

In our meeting with Mr. Marshall from the David Suzuki Foundation, he said that, in Quebec, producing a tonne of aluminum generates four tonnes of CO₂. In China, the same tonne of aluminum generates seven tonnes of CO₂. So, if we add significant cost, not just to the production of aluminum, but to all manufactured industrial products...We know the present difficulties in manufacturing. If companies produce CO₂, they will have to buy credits.

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): If they have reduced their emissions in recent years, they could sell credits abroad. That is what Alcan is asking for.

[*English*]

The Chair: Mr. Bigras, could you address the chair, please? Otherwise we get into a conversation.

[*Translation*]

Mr. Bernard Bigras: It is because he is looking at me.

Mr. Luc Harvey: I was looking at the chair. Mr. Bigras was paying attention to what I was saying, so I looked in his direction.

Coming back to the point I raised earlier, even the David Suzuki Foundation said that it was important, if we did not want to send Canadian production off to developing countries...

In Canada, we produce a tonne of aluminum and generate four tonnes of CO₂; in China, they generate seven. If we increase the costs of producing aluminum in Canada, all we will do is send production to China or India where they produce almost twice as much CO₂. That was the question I asked the environmental people or groups who know the situation well, like David Suzuki and the Pembina Institute that Mr. Cullen and Mr. Layton used as a reference when they drafted Bill C-377 that we have before us today.

I refer you to page 46 of the "blues" to see the witness's reply. He simply said: "We need fair treatment for our national production as we have for our exports. China should pay an equivalent tax on its production, and should pay more if it is less efficient."

Mr. Chair, Mr. McGuilty is involved in a discussion and it is distracting me. I would like him to hold his discussion outside or to...

• (1555)

[*English*]

The Chair: I believe, Mr. Harvey, that Mr. Cullen and Mr. McGuilty are being quiet enough. I can't hear them.

Mr. Luc Harvey: If they want to speak together, I don't care about that. They can go outside, but now they are disturbing my speech, and I would be—

The Chair: Mr. Harvey, it's not bothering me. I don't see any other members, so my feeling would be that they can whisper, and I'll ask them to keep it quiet and not be too rowdy.

We'll go back to Mr. Harvey, please.

Mr. Mark Warawa: Could you just bear with me for a minute, Chair? My sound on this plug-in is not working. It keeps breaking up here. Okay.

The Chair: Mr. McGuilty.

Mr. David McGuilty (Ottawa South, Lib.): I have a point of order. I think my colleague, Mr. Harvey, referred to me as "Mr.

McGuilty". It's McGuilty. I would appreciate the record being corrected—McGuilty, not McGuilty.

Thank you, Mr. Chair.

The Chair: Could we just note it is McGuilty, not McGuilty, please, Mr. Harvey?

Would you like to carry on, please?

You're fine now, Mr. Warawa?

Mr. Mark Warawa: Yes, I am. Thank you.

The Chair: Mr. Harvey, please.

[*Translation*]

Mr. Luc Harvey: We are talking about the possibility of sending industrial production out of Canada. When we invite witnesses here, it is not just to give them a free trip and a lunch. We are politicians, not scientific experts. We bring the most competent people we can to discuss these matters. Unless we are bringing witnesses here just to pass the time, I think that we should be more aware of what is going on and, above all, of what they are telling us.

The "blues" tell us that we are going to cause ourselves problems if all we do is export our manufacturing, that is, Canada's industrial production, without protecting it or knowing the true costs. If we ship our manufacturing out of the country, not only do we just move the problem somewhere else, we make it worse. Nor will we have solved the greenhouse gas emissions problem because, after all, emissions from outside Canada affect the climate inside Canada. They play a significant role.

It seems to me that Bill C-377 causes problems both constitutionally and in application. We presently have a law that seeks a 20% reduction in greenhouse gas emissions by 2010. Not only has this been tabled, it has been passed and costs have been calculated for manufacturing, for all Canadian production and for industry as a whole. The calculations were thorough.

I find it hard to believe that Mr. Jack Layton came here to the committee to table Bill C-377 and blithely told us that he had no idea what it would cost. For someone who aspires to be prime minister, that is beyond disrespectful. Earlier, Mark used the word hypocrisy. I am disappointed that someone who wants to become prime minister can table a bill with so little regard for its effects on the Canadian economy. Honestly, it makes me sad. He went so far as to say that it was the government who should be calculating the impact of his bill.

Then, Ms. Donnelly tells us about the costs reaching 25% of the gross domestic product, using present economic models. I have talked with economists, that is to say, to officials who are responsible for budget projections, about what effect a bill should have. It seems that the financial models used by Ms. Donnelly are well recognized and they show that 25% of gross domestic product should be calculated as the effect of meeting the objectives of Bill C-377.

At a cost of 25% of gross domestic product, Saskatchewan would have to assign 99% of its gross domestic product to Bill C-377. The NDP should have the sense to wait until at least one economic study has been conducted. I am not saying that we should conduct that study. If we did, you would want no part of it. We should find an economic study that everyone recognizes and accepts in order to determine whether it is or is not valid.

• (1600)

During question period, one of the things that people wanted was a budget for families, money for everyone, especially to protect the manufacturing industry. You still brought up a number of matters related to the budget today. As to Bill C-377, I am not saying that we should accept what Ms. Donnelly said lock, stock and barrel, but I am in favour of finding an acceptable way to calculate its impact.

Passing a bill that requires us to reduce our greenhouse gases by 25% below 1990 levels, or, in other words, to reduce our present emissions by 50% by 2020, in 12 short years, that is, is simply not reasonable. I ask that we agree to find someone who can calculate the precise costs of Bill C-377, so that we are in a position to make an informed decision.

We asked witnesses to come before this committee. We also asked for advice, and the most significant advice that we received was to calculate the costs that would be incurred. I think that everyone would benefit from that. This document we have here has been published. We are aware what a reduction of 20% by 2020 means because of the act now in force. As to health, we know that it costs \$6 billion annually to care for people with respiratory problems due to greenhouse gases, smog, and other things like that.

I would ask Mr. Cullen to move that we officially ask an outside, independent group to cost out this bill before we go any further. I am not talking about whether it is constitutional; that is another issue. At least we would have some answers. I think that everyone is looking for answers. The Liberals have come here today with a list that exceeds Kyoto targets by 33%. They are no more stupid or more intelligent than anyone else; this is a pretty difficult topic. The challenge is not just Canada's, it is worldwide. So it affects Europe just as much as it affects the other countries of the world. The challenge is significant.

When our Liberal friends signed the Kyoto Protocol in 1997, I do not believe that they expected that, about ten years down the road, we would be so far from meeting the protocol's objectives. Setting objectives means incurring costs. We know that the world economy is undergoing major changes. There is talk of a significant global recession spreading both from the United States and from Europe. At the moment, we are all going through an economic slowdown that is not only major, but it is also predictable. Since the mortgage crisis, in fact, everyone has been expecting problems in industrial production and manufacturing. All this should be quantified. I believe that it would be wise, and would constitute due diligence for the members of Parliament around this table.

• (1605)

Thank you very much, Mr. Chair.

[English]

The Chair: Good. Thank you.

The order I have in front of me is Vellacott, Bagnell, and Watson, at this point. That's the order in which they've come in.

Mr. Warawa.

Mr. Mark Warawa: I have more things I'd like to say.

The Chair: Mr. Vellacott, the floor is yours.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): Thank you, Mr. Chair. I appreciate that.

I'm going to address some of the concerns that were already raised, or at least implied, by my colleague Mr. Warawa.

Another aspect that I want to refer to here is how this impacts Saskatchewan. This bill has a pretty significant, pretty negative effect for the province of Saskatchewan, which has been alluded to before by Ms. Donnelly and others, and that concerns me a great deal.

At this point, particularly when Saskatchewan is coming into a good time and we're a "have" province, now we're going to have the NDP—which purports to protect the little guy, and which is a party that actually had its roots in my own home province with Tommy Douglas as its leader—now we're finding them, for whatever reasons, coming back at our province and, it would seem, significantly trying to hurt the province, whether intentionally or inadvertently, I'm not sure. But that's of great concern to me as a member from that province.

We've had the status of being a "have-not" province, and now for the first time we're moving into a category of being a "have" province.

The premier, just yesterday, expressed great pleasure with our budget, in particular the \$240 million for carbon sequestration in the province. That will be good for the environment. It will be very good for the south of the province, where we have already begun to do that kind of thing. I want to come back to that a little bit, and especially make the point that what we have proposed as a government is a practical kind of solution in a number of areas, on clean water and land and air. That regulatory framework is very practical with respect to air emissions and would do us good as a province as well.

I'd like to mention some of the negative aspects or downside of this particular bill we have before us here today. I share some of the concerns that the Bloc member Mr. Bigras has raised in his testimony earlier here with respect to Bill C-377. I'll be referring to some of the stuff in Hansard and the blues here.

I've found very helpful—and I think other members hopefully did as well—the document submitted to us committee members by Mr. Peter Hogg, on February 11 this year. He submitted to the committee a document on the constitutionality of this particular bill and raised some pretty heavy-duty concerns about the constitutionality of Bill C-377. He talked about how, in his view, our accountability act here clearly, in its present form without a major rewrite, was not at all withstanding the constitutional test with respect to climate change. He wrote it on February 1, but submitted it to the committee on February 11.

For the record, Peter Hogg is a well-respected legal scholar in the country, a Companion of the Order of Canada, Queen's Counsel. Those are some significant and very impressive credentials. He's a professor emeritus at the Osgoode Hall Law School of York University and the former dean there. He's also a scholar in residence at Blake, Cassels and Graydon LLP. His field of expertise in particular—as you would know, Mr. McGuinty—is constitutional law. That's what he excels in, and he has much to say and some pretty pointed things to say on the issue of this particular bill.

He's written extensively. For members like my friend Mr. McGuinty and others—and it is one that David has possibly read in detail, every word of it—he has written *Constitutional Law of Canada*, Carswell edition, Toronto, 5th edition, 2007, two volumes. I suspect that the law students have probably read a fair bit of that.

He addresses some of the things here, and I'll just read some of his remarks from his brief that we all have and maybe we all recall from that submission on February 11 here:

Bill C-377, the Climate Change Accountability Act, First Reading October 31, 2006, is a bill with the purpose of reducing Canada's greenhouse gas emissions (s. 3). By s. 5, it provides that the Government of Canada, "shall ensure" that Canadian greenhouse gas emissions are reduced to 25% below 1990 levels by 2020 and to 80% below 1990 levels by 2050.

The bill itself makes no provision—and that's been acknowledged by a number of people—for the achievement of these targets, leaving that entirely to regulations to be made by the Governor in Council.

• (1610)

Subsection 7(1) provides that "the Governor in Council may make regulations for carrying out the purposes and the provisions of this Act". Subsection 7(2) provides that "the Governor in Council shall make regulations to ensure that Canada fully meets its commitment under section 5", the emphasis added.

Peter Hogg says, "Putting the Government of Canada's obligation under section 7(2) into a realistic context, I note that Canada signed the Kyoto Accord in 1997 and committed to reducing greenhouse gas emissions down to 6% below 1990 levels by 2012". He goes on to say, "At the time of signing, Canada's emission levels were already 13% above 1990 levels. I am reliably informed that the level of emissions is now 33% above 1990 levels". And this is all the backdrop to what he's about to say in terms of the constitutionality or lack thereof of this Bill C-377.

And where he gets this information from apparently, that number being 13% above 1990 levels at the signing—Canada's emission levels were already 13% above 1990 levels, and 33% later—that number was generally accepted by informed participants at the C.D. Howe conference on the economics of greenhouse gas emissions control in Canada in Toronto, December 6 to 7, 2007.

He says, "Canada's economy and population continue to grow, increasing the demand for energy. Obviously radical changes in the behaviour of Canadians would be needed to take the level of emissions down from 33% above 1990 levels to 25% below 1990 levels by 2020—a date that is only 12 years away."

He goes on to say, "Since government incentives and exhortations to voluntary reductions have not halted the trend of rising emissions, very severe and pervasive regulatory restrictions on activities that

produce emissions would be necessary to actually reverse the rising trend and reduce greenhouse gas emissions sharply enough to reach the Bill C-377 target for the year 2020."

He goes on to say, "The need for strong and pervasive regulations to meet the Bill C-377 target for 2020 is especially the case since Bill C-377 is not a tax measure and does not authorize the imposition of carbon taxes."

He further goes on to say, "Many economists have advocated the view that taxes are the most effective means of changing behaviour to reduce greenhouse gas emissions", and apparently that was the view of a number of economists who presented papers or participated in discussions at the C.D. Howe conference we just referred to.

So economists point out that carbon taxes could be revenue neutral by being balanced with cuts in income taxes or other taxes.

The Parliament of Canada has unlimited taxing powers, so this would raise no constitutional issues. However, he goes on to say, "No taxes are authorized by Bill C-377, none were proposed by the previous Liberal government and none have been proposed by the present Conservative government."

"The Parliament of Canada has two heads of legislative power that might be invoked as the authority to enact Bill C-377. One is the criminal law power and the other is the peace, order, and good government power. In my opinion, neither of those powers will support a law that is as broad and vague as Bill C-377. I will briefly discuss each of these powers in turn.

"The Constitution Act, 1867, by s. 91(27) confers on the Parliament of Canada the power to make laws in relation to 'criminal law'. The Supreme Court of Canada has held that a law will be classified as criminal law if it has "a valid criminal purpose backed by a prohibition and a penalty".

• (1615)

Again, that was the widespread view among economists who presented papers or participated in that earlier referred to discussion at the C.D. Howe conference.

So far as the "valid criminal purpose" is concerned, the Court has held that the protection of the environment counts as a valid criminal purpose. The purpose of Bill C-377 therefore qualifies as a valid criminal purpose.

So far as the "prohibition and a penalty" is concerned, the question is whether Bill C-377 contains a prohibition and a penalty, as those terms have been understood in the case law.

The courts have traditionally distinguished between criminal law and regulatory law. The Criminal Code is a classic case of criminal law in that the Act itself contains prohibitions of various kinds of conduct (theft, assault, murder, and so on). These prohibitions can be self-applied by citizens who, if they offend, will then be subject to punishment by the criminal courts. For the great bulk of offences, there is no role for an administrative body or official to make regulations or to exercise discretion. A regulatory law, on the other hand, is one that achieves its purposes by more sophisticated means than a simple prohibition and penalty, typically vesting discretionary powers in an administrative body or official and often relying on regulations made by the executive. Even if the regulatory scheme is ultimately subject to the sanction of a prohibition and penalty (as is the case with most laws), those are not the leading characteristics of the law: the prohibition and penalty originate in a regulatory scheme. On this basis, federal laws attempting to regulate competition through an administrative body and to regulate the insurance industry through a licensing scheme have been struck down as falling outside of the criminal law power.

I think that's important for us to note for the purposes of this bill.

In *R. v. Hydro-Québec* (1977), the Supreme Court of Canada upheld the Canadian Environmental Protection Act (a 1988 version of the current federal statute) as criminal law, despite the fact that the Act's prohibition of the emission of "toxic" substances was preceded by an administrative process to determine whether a particular substance should be classified as "toxic".

I think my friends from the other parties would probably have some recall of the significance of that particular decision.

The Court split five-four on the issue with the dissenting judges saying that "it would be an odd crime whose definition was made entirely dependent on the discretion of the executive".

• (1620)

Mr. David McGuinty: That was six-three.

Mr. Maurice Vellacott: Six-three? He says it was five-four.

He goes on to say:

...that "the Act's true nature is regulatory, not criminal". But the majority held that the intervention of some administrative discretion did not rob the law of its criminal character. At the end of the day, there was a prohibition and a penalty for the release of toxic substances.

"Speaking for the majority"—Mr. McGuinty will probably know this from memory—was La Forest, and he said "what Parliament is".... You remember that, right?

Mr. David McGuinty: Monsieur Gérard La Forest. That's right.

Mr. Maurice Vellacott: Mr. Laforest said:

What Parliament is doing...is making provision for carefully tailoring the prohibited action to specified substances used or dealt with in specific circumstances. This type of tailoring is obviously necessary in defining the scope of a criminal prohibition, and is, of course, within Parliament's power.

This passage makes it clear that, in a complex area like the environment, there can be some administrative discretion in the creation of criminal offences, but the role of the discretion has to be "carefully tailored" by Parliament, meaning that has to be defined and limited by the act.

He goes on to say:

Based on this ruling, it is my opinion that the provisions of Bill C-377 are not carefully tailored in a fashion that could be upheld as a criminal law.

This is where we're getting to the unconstitutionality of it.

It is true that the Bill, by s. 12, provides that the contravention of a regulation is an offence punishable by fine or imprisonment. But the regulation-making power is so broad and vague that any prohibition in the regulations is left by the Act to be designed by the executive within the ill-defined limits set by s. 7 (described earlier in this opinion). The range of conduct that contributes directly or indirectly to the emission of greenhouse gases is vast. Under Bill C-377, it is all subject to regulation, depending entirely on the discretion of the federal cabinet. From the Act it is impossible to discern what conduct the federal cabinet will actually decide to prohibit. Indeed, even the amount of any penalty is left to the federal

cabinet: by 12, any fine or imprisonment for breach of the regulations is "as prescribed by the regulations".

Then he says:

In my opinion, Bill C-377 does not contain a "carefully tailored" prohibition or penalty of a kind that would qualify as an exercise of Parliament's criminal law power. The Bill would not be upheld by the Supreme Court as a criminal law.

Then under the section of peace, order, and good government he says:

The Constitution Act, 1867, by the opening words of s. 91, confers on the Parliament of Canada the power to make laws for the "peace, order, and good government of Canada" (pogg). The branch of that power that can authorize environmental legislation is the "national concern" branch, under which Parliament has authority to make laws on topics of national concern.

He then says, as Mr. McGuinty will remember:

In *R. v. Crown Zellerbach* (1988), the Supreme Court of Canada upheld the federal Ocean Dumping Control Act under the national concern branch of pogg. The law in issue prohibited ships from dumping any substance into the sea without a permit. The Court upheld the law, taking the view that marine pollution was a matter of national concern that was distinct from matters of provincial jurisdiction and beyond the capacity of the provinces to control. But, as in *Québec Hydro*, the Court was narrowly split, in this case four-three. The split was over the requirement of the national concern branch that any matter of national concern had to have "a singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern". For Le Dain J. speaking for the majority, the topic of marine pollution did have sufficiently ascertainable limits to meet this requirement of distinctness. For La Forest J. speaking for the dissenting minority, the topic of marine pollution was not sufficiently distinct, because it could lead to federal regulation of industrial and municipal activity, resource development, construction, recreation and other matters that contribute to marine pollution but are within provincial jurisdiction.

• (1625)

In *Crown Zellerbach*, the majority upheld the law, but the issue of difficulty was the requirement of distinctness. Although the law merely prohibited dumping at sea, the split of the Court made clear how close the decision was. In the case of Bill C-377, no attempt has been made to place limits on what Parliament can do to reduce greenhouse gases; the Bill appears to authorize any regulation that would have the effect, direct or indirect, of reducing greenhouse gas emissions. On the face of it, the Bill represents an assertion of federal authority (coupled with a massive delegation to the executive) over a huge range of matters that are now within provincial jurisdiction. While there can be no doubt that the reduction of greenhouse gases is a matter of national concern, legislation has to be drafted that focuses on a distinct matter, such as industrial air emissions, to have any prospect of being upheld by the Court under the national concern branch of pogg.

Of course, "pogg" is peace, order, and good government.

In my opinion, Bill C-377, while clearly directed to a matter of national concern, is too broad and sweeping to satisfy the requirement of distinctness that the Court has imposed as a limitation on the national concern branch of pogg. The Bill would not be upheld by the Court under that head of federal power.

He then gives his conclusion with respect to his perception of the unconstitutionality of Bill C-377:

The constitutional problem with Bill C-377 is that it leaves the reduction of greenhouse gas emissions solely to a regulation-making power vested in the executive. The only direction given to the Governor in Council as to the nature of the regulations is that they must be “to carry out the purposes and provisions of this Act” and “to ensure that Canada fully meets its commitment under section 5 [to achieve the targets for reduction of emissions]”. This extraordinarily broad and sweeping regulation-making power purports to authorize any regulation that would have the effect of reducing greenhouse gas emissions. Such regulations could reach into every area of Canadian economic (and even social) life. The Bill enacts no restrictions as to the kinds of laws that are contemplated or the kinds of activities that can be regulated. Such a sweeping grant of authority to the executive is unprecedented outside of wartime—and should be a matter of grave political concern quite apart from constitutional issues. However, the constitutional issues are enough by themselves to defeat the legislation.

Bill C-377 is outside Parliament’s power over criminal law, because that head of power, in addition to a criminal purpose, requires a prohibition and a penalty. If the prohibition and penalty are to be delegated to the executive to design and enact, the delegation must be “carefully tailored” so that Parliament at least provides the guidelines for the creation of the new criminal offences. Bill C-377 provides no guidelines of any kind.

Bill C-377 is outside Parliament’s power over criminal law, because that head of power, in addition to a criminal purpose, requires a prohibition and a penalty. If the prohibition and penalty are to be delegated to the executive to design and enact, the delegation must be “carefully tailored” so that Parliament at least provides the guidelines for the creation of the new criminal offences. Bill C-377 provides no guidelines of any kind.

Bill C-377 is also outside Parliament’s power over peace, order, and good government, because the national concern branch of that power authorizes laws relating to a matter of national concern only if the matter is sufficiently distinct to distinguish it from matters of provincial concern

So I would think that my Quebec colleagues, Mr. Lussier and Mr. Bigras, would be particularly concerned about this, and particularly that last part, where he judges it to be....

Pardon?

• (1630)

Mr. David McGuinty: [*Inaudible—Editor*]

Mr. Maurice Vellacott: Exactly.

It is an issue in terms of the provinces, for sure. He says that the matter has to be “sufficiently distinct to distinguish it from matters of provincial concern”. In his view, it does not.

So, “the vagueness and breadth of Bill C-377 has the potential to reach deeply into many fields of provincial authority”. That’s a concern for Saskatchewan. It’s a concern for every province. It’s obviously very much a concern, I would think, for Quebec, as well. It reaches into no end of areas of provincial authority.

“Without more careful definition of the kinds of regulations that are contemplated,” he says, “the bill is outside the national concern branch of peace, order, and good government.” His conclusion is that “the Parliament of Canada lacks the power”, clearly lacks the power “to enact Bill C-377, and if Parliament were to enact the bill it would be struck down by the Supreme Court of Canada”.

That was the respectful submission of Peter W. Hogg, a distinguished legal authority in our country.

I’ll come back to that a little bit later, in terms of the constitutionality, because I think it’s a big one. It’s probably reason enough to do some further study of this and to get this thing right. But in its present form, even with many amendments, it needs to be started all over from scratch. I think that would be the better approach.

As a member of Parliament for just about eleven years now from the province of Saskatchewan, I saw the impact that this particular bill would have in a disproportionate way on my home province. It’s a province that for the first time is coming out of the have-not status, coming to a point where we’re doing well, and we will do so in more significant ways.

Compared even to places like Alberta, we have a greater breadth, if you will. We have uranium, we have diamonds, we have the potash there, and we’ve got fairly diversified. We could have a much more diversified economy than some of the other provinces. So that stands us in pretty good stead.

But I’m speaking of the impact of Mr. Layton’s bill, and as I said once before in a meeting here, I’m not exactly sure what Mr. Layton has against that province, the birthplace of the NDP or CCF. The only thing I can figure is that it’s because they’ve turned the NDP out on its heels just recently. As of last fall, we have a Saskatchewan Party government in place.

Typically, in our province of Saskatchewan, it’s kind of ironic. Whenever things are looking up, looking a little better, we don’t figure we can trust the NDP, the socialists, to carry it from there, so we turf them out. If we get down on our luck and things go unfortunate, then sometimes we’ll allow them back for a short period of time.

That’s the typical and historic pattern in the province of Saskatchewan. If things are looking up and looking good, we don’t trust the NDP to steward that economy and steward things for the days ahead. We’ve just had to evict them, I guess, for the present, and they’ve been relinquished by a fairly significant majority.

Rather than the bill before us, we should go back to C-377, the common-sense approach that our government was taking, which is far superior and supercedes all of the attempt of the bill here by the leader of the NDP and advocated by Mr. Cullen here in this committee on his behalf. I think anybody who is fair and objective would want to admit that this government is serious about tackling climate change and about doing it in practical ways, in terms of clean water, clean land, clean air.

It’s been in our budgets, it’s gained significantly in the budget 2008. For my province, there is a big impact in terms of what we can do now by way of carbon sequestration.

The government is serious about tackling climate change and protecting our environment, cleaning up the air Canadians breathe today and down the road, as well as looking to the future, for my children, for my soon to be six grandchildren. We need that kind of thing, and we want to do that in Saskatchewan.

This Bill C-377 will simply not do that. In fact, as opposed to this bill before us, back in October 2006 we were already moving to regulate greenhouse gases that caused climate change, as well as air pollution. We’ve proceeded on that with the necessary implementation.

• (1635)

Some of the effects of climate change in Saskatchewan are pretty serious, pretty severe. That’s why we need to move on it. I think all of us around this table would be agreed on that.

We're not immune as a province to the effects of climate change. Environmental impacts of climate change on Saskatchewan include challenges for agriculture. That's a big thing in our province. It's not as much a percentage of the gross domestic product for our province, but it's still significant. It's still a huge percentage. It will impact pretty significantly on agriculture.

My province of Saskatchewan is a fairly cold place sometimes, but too warm a climate would create droughts. We've faced some of that in the past and could in the future. It would also produce the kinds of conditions for weeds and insects, which would reduce crop yields, and cause some summer heat stress in livestock as well.

So that's a concern for those who farm, for my constituents, and for me. We've just bought a little farm there outside of Saskatoon, so we'll be directly involved in experiencing that, and hopefully not too many of the serious adverse effects of that.

The severe weather is something we need to take seriously in our province. A warming—

Mr. Mark Warawa: On a point of order, Mr. Chair, I'm having difficulty hearing Mr. Vellacott. He's right beside me. Could I ask you to have the noise in the room quieted down just a little bit, please, so we can hear?

The Chair: I would ask people to try to keep their conversations as low as possible, please, because we don't want to miss Mr. Vellacott's riveting information.

Mr. Maurice Vellacott: Thank you, Mr. Chair. I have to say, I don't mind a little bit of the interaction back and forth.

The Chair: That's fine. Just keep it between you and me, and we'll keep it going.

Mr. Maurice Vellacott: It was getting a bit distracting, but I'll do my best to carry on here in the midst of that.

We need to take pretty seriously the air emissions in our province and our country and the effects of climate change. If we don't get ahead of that and deal with it in practical ways, it could be pretty serious for our province.

A warming climate is expected to increase both the number and the severity of thunder storms, heat waves, and drought that would cause damage to our crops and endanger life and property as well.

Going back to our plan, our regulatory framework, Bill C-288 I think would have been a much superior approach to be taking. We should have had some pretty good cooperation with that, instead of this Bill C-377, which wasn't properly costed and is constitutionally suspect. Others around the table are aware of that as well.

In our approach—as opposed to this Bill C-377, again—there were mandatory targets, real results. We don't see that here. And Mr. Hogg has pointed that out, the vagueness and the ambiguity of it.

In our approach, which would have been the better one to go with, reducing emissions of greenhouse gases, air pollution... It's not a matter of choice for industry. You can't leave it up to them to decide if they want in or not. It is compulsory. It has to be. Our plan, our regulatory framework, would set that kind of compulsion, the mandatory targets for reduction of industrial greenhouse gases that cause climate change. Those targets were stringent and were going to

be tightened every single year, so as a result we would start to see those absolute reductions. Again, with Bill C-377 we don't have that, we don't have the preciseness. It's vague, it's ambiguous, and it gives far too much power and too much reach in respect to its constitutional intrusion, as well, whereas these industrial emission targets, the ones from our plan, combined with other actions, practical actions announced to date to fight climate change, would put us on track for that 20% absolute reduction of Canada's greenhouse gases compared to 2006 levels by the year 2020.

I appeal to Mr. Cullen to look in terms of the seriousness and the practicality and pragmatism of those kinds of regulations. That would reduce the emissions of pollutants that cause smog and acid rain by up to 55% as soon as 2012—compared to 2006 levels. As well, I think when you're looking at a plan—and that's not at all anywhere here in Bill C-377—you need to have flexible tools for compliance. You don't get there overnight, but you need to make it mandatory, compulsory, and allow the kinds of creativity—I guess I would say—and the flexibility in terms of the tools of compliance to get the job done.

There's no doubt that in any of these measures, and in terms of our regulatory measures, as well, there would be a period of adjustment for industry, because this is pretty hard stuff, it's tough stuff, but it's required. You need then an achievable plan that does not sacrifice jobs in Saskatchewan.

The concern with this particular Bill C-377 is that in fact we will have significant economic hurt and impact. Counter-intuitively, if you will, we'll hurt the economy such that we won't be able to do the good things in terms of the environment, the clean up, and the good clean water, land, and air that we need.

By way of the regulatory regime that we were proposing, giving industry the flexible tools to meet their targets, companies being able to choose the most cost-effective way to comply—which includes making real reductions in their own facilities, taking advantage of emissions trading, and investing in new technologies—all of those things are within the basket of what they can do to get the job done and to meet their targets.

Companies will also be able to invest in a technology fund that will deliver greenhouse gas reductions, now and in the future. I think technology is pretty crucial to ensure that we make the progress against climate change, and the confirmed guiding principle of that fund is that it will not be used as a mechanism for the inter-regional transfer of wealth and resources. That's a big concern to us in our province.

Moreover, the provincial technology fund may be accredited as compliant as long as they meet the federal requirements. That fund will be used to finance further research on carbon capture and storage technologies that show a lot of promise in Saskatchewan.

•(1640)

I was very pleased about the progress we're going to be able to make as a result of the budget announcement yesterday of some \$240 million for carbon sequestration. For my province, that was a major, significant step forward, not only for us but for our country. The benefits will accrue to elsewhere across this nation. Some critics might complain about the cost of these measures for Saskatchewan's industry, but they are more forward-looking measures. Some see the glass as half full and some as half empty, but we need to be looking for and recognizing those new opportunities in Saskatchewan. And it's come our way already in terms of the \$240 million for carbon sequestration.

In some sectors, it's going to mean that industry will have to seize the opportunity to improve competitiveness by becoming more innovative. For Saskatchewan's oil and gas sector, that's the case. It will mean their developing and adopting cleaner technologies, and so be it. They do it, and the job gets done. The oil and gas industry—or as Mr. Layton likes to refer to it, big oil and big “ass”, I think that's what he calls it—in my province has thrived on competition. The entrepreneurial spirit along our border with Alberta, down in the south of the province in the Estevan and Weyburn area and across through Swift Current, as well, has driven its growth and has responded to challenges by finding those necessary innovative solutions.

In our regulatory regime, as opposed, again, to Bill C-377, Saskatchewan's electricity generating industry will also have to make changes, which we acknowledge, to achieve the required reductions by adopting cleaner technology to improve its competitiveness. And we'll probably be able to market that abroad, as well.

We've already seen those two sectors cooperate on an exciting and innovative project in Weyburn, where the carbon dioxide emissions from an electricity generating station that uses clean-coal technology are injected back into the ground. And as I said, with some \$240 million in the budget yesterday, they can explore that and develop that even more. That's one of the largest climate change research projects in the world. It will help us understand how we can use underground storage of greenhouse gases to address climate change for our nation.

Some of the other measures that I think are significant and that, again, are omitted and not referenced in any way in Bill C-377, we're taking action on. Our approach is to reduce the emissions causing air pollution from cars, recreational vehicles, trucks, trains, and marine engines. We are taking action to use products, such as light bulbs, dishwashers, refrigerators, air conditioners, and commercial boilers, that use energy much more efficiently. We want to have efficient energy, because as a result, we'll have less wasted energy and less air pollution. I think we need to, without question, for any and all and for those that suffer allergies and those that have other air-related ailments.

We need to work to improve that, especially, as well, for indoor air. Saskatchewan is a cold enough province that a good many months of the year we spend inside. Consequently, for the air we breathe inside our homes, our places of work, our businesses, the malls, and so on, it's crucial that we also deal with that and have the regulations that will address that issue. In Saskatchewan we spend a

lot more time indoors than they do, maybe, even in some other provinces. So actions to improve indoor air quality are very important for us. Again, this bill has nothing specific in respect of that.

I think the federal government needs to be doing that careful collaborative work with the provinces, recognizing the significant actions the provinces and territories are taking. They need to be acknowledged and credited or applauded for all they do to promote clean air and to address climate change. Those efforts and initiatives need to be encouraged.

•(1645)

Again, from the federal point of view, there is nothing referenced to this in Bill C-377; but we need to have that kind of partnership, that working together, with the provinces and territories to avoid duplication of effort and to ensure we get maximum environmental benefits with minimum administrative and cost burdens for the industry.

Mr. Chair, I think the noise level is getting up a little bit. I'm finding it a bit uncomfortable again.

The Chair: Again, I'd remind members that we do have a speaker. Could we try to keep the noise down and give Mr. Vellacott the—

Mr. David McGuinty: Just keep going, Maurice.

The Chair: Go ahead, Maurice.

Mr. Maurice Vellacott: Thank you.

Again, that cooperative approach is far and away the better approach, instead of just mandating things and hitting from the top down provinces like Quebec, or whatever province it has to be. I think the approach our government is attempting to take in respect of the provinces and in respect of their authority is the better approach.

My province is going to benefit in a significant way from clean air, and from the climate change funding announced by Prime Minister Harper.

Under the trust fund initiative, Saskatchewan will receive something like \$44 million to support provincial projects. That results in real reductions in greenhouse gas emissions and air pollutants in the province. So money is being spent, as opposed to not knowing exactly what the costs will be and the dollars spent in Mr. Layton's bill, Bill C-377.

Some of the activities planned in our regulatory approach include continuing development of near-zero carbon dioxide emission electrical generation projects, and implementing measures to improve energy efficiency and conservation, including promotion and support for energy reduction by homeowners, businesses, farms, and communities. All of that is very commendable.

I was quite excited to hear the chair relate to me last week the good stuff he's done with solar power just recently, and how, I think, he now puts power back into the grid in Alberta as a result of that. So in his retirement years, I guess he has a little business going there and will do very well. In a significant way he is contributing to cleaning up the environment across the country, but particularly in his own home province.

So I think that developing and utilizing renewable and alternative energy sources, as he's doing, and as I want to do with geothermal—including biofuels, solar energy technologies that some others are doing, and doing effectively as well....

The regulations would continue to encourage us to lead efforts in carbon capture, including sequestration, which we talked about here, and particularly through the international test centre for carbon dioxide capture.

So the clean air and the climate change funding for Saskatchewan is part of a national \$1.5 billion initiative to protect Canadians from the consequences of climate change and air pollution. Those initiatives will ensure that we protect our environment, that we clean up our air, and that we make real progress toward reducing greenhouse gases.

I believe in this different approach, as opposed to the one in Mr. Layton's Bill C-377, which is going to punish our province very significantly and very adversely affect us. If we take the approach our Conservative government is proposing, the regulations and regulatory approach we have indicated, we will implement this plan in a way that ensures our economy can continue to grow and prosper. In fact, these measures will bring economic benefits to some sectors. For example, Saskatchewan's forestry and agricultural sectors will benefit from the reduced impact of acid rain and smog. New industries, such as those that produce energy from renewable resources like the wind and sun, will also benefit and create jobs. So there is also something in terms of the economic opportunity there.

So I think this means, not only for Saskatchewan residents but beyond them as well, that tough regulations will have real and tangible health and environmental benefits for everyone, as well as positive economic benefits.

In Saskatchewan, my home province, where I advocate from and advocate for, these benefits are invaluable. They include cleaner communities and natural spaces; healthier children; fewer emergency room visits and fewer hospital admissions and premature deaths; and also, obviously, more sustainable natural resources.

So for the first time since Canada signed the Kyoto Protocol nearly a decade ago, Canada is going to be making meaningful contributions to the global effort to control greenhouse gas emissions. But strong actions like these, as opposed to the vagueness and the ambiguity of Bill C-377, come at a cost, and those costs, while manageable, will be borne, at least in part, by individual Canadians and their families.

● (1650)

We must all be prepared to do our part to bear that responsibility to get the job done for the generations ahead, but we have to make a start now. So we have that important role to play, and we can take significant measurable action in our own backyard, in my province of Saskatchewan. I think the citizenry is prepared to do that.

Climate change is a global issue. It requires federal leadership. However, the burden must be shared by everyone, including provinces, territories, industry, and individual Canadians from coast to coast.

I want to refer again, in terms of the contrast that we have in Bill C-377, to some of the very practical things we're doing. I want to refer as well to some of the Hansard records that somebody just took away from me bit ago, some of the good stuff on the record there in terms of the questions, in a few places, to Mr. Hogg, questions raised by Mr. Bigras and Mr. Godfrey, who is not here today, who had raised some issues. Maybe, in fact, I'll turn back to that in a moment as well.

Again, when you look at the suspect constitutionality of the bill before us and then you move on to something substantive, solid, and practical, as recent as yesterday in terms of some of the effect that we have here.... I just refer to a couple of places here.

Mr. Hogg was pretty plain. I think he was pretty clear in terms of the comments he made. Mr. Bigras had some good questions.

● (1655)

Mr. David McGuinty: You said Mr. Hogg.

The Chair: Mr. McGuinty, can you advise me of corrections you'd like made, please?

Mr. David McGuinty: Noted.

Mr. Maurice Vellacott: Professor Hogg and Mr. Bigras are the two different individuals I'm making reference to here.

But Mr. Hogg, or Professor Hogg, as Mr. McGuinty reminds me to respectfully refer to him as, who is the scholar in residence at Blake, Cassels and Graydon LLP, said specifically in his Hansard record—and he doesn't mince words:

The constitutional problem with Bill C-377 is that it leaves the reduction of greenhouse gas emissions solely to the regulation-making power vested in the executive. The only direction given to the Governor in Council as to the nature of the regulations is that they must be "to carry out the purposes and provisions of this Act" and "to ensure that Canada fully meets its commitment under Section 5"—the section on the targets for 2020—and there is a later target as well.

This extraordinarily broad and sweeping regulation-making power purports to authorize any regulation that would have the effect of reducing greenhouse gas emissions. Such regulations could potentially reach into every area of Canadian economic—and even social—life. The bill enacts no restrictions as to the kinds of laws that are contemplated or the kinds of activities that can be regulated. Such a sweeping grant of authority to the executive is unprecedented outside of wartime and should be a matter of political concern.

This is out of the Hansard record on February 11.

He said:

[It] should be a matter of political concern, quite apart from the constitutional issues. However, the constitutional issues are all that I'm concerned with, and they are, in my view, enough to defeat the legislation.

I underline this, "enough to defeat the legislation". That's pretty pointed.

He continued:

First of all, to take the two heads of power identified by Mr. Castrilli, Bill C-377 is outside Parliament's power over criminal law because that head of power—in addition to a criminal purpose, which it has, being the prevention of global warming and the protection of the environment—also requires a prohibition and a penalty.

He reference the Hydro-Québec case, which I referred to before, and it was in his printed submission, saying,

What the Hydro-Québec case said was that if any part of the prohibition and penalty is to be delegated to the executive to design and enact, the delegation must be “carefully tailored” so that Parliament at least provides the guidelines for the creation of the new criminal offences. Bill C-377 provides no guidelines whatsoever as to the criminal offences that would emerge from the regulation-making power of the Governor in Council.

To take the second head of power identified by Mr. Castrilli, Bill C-377 is also outside Parliament's power over peace, order, and good government because the national concern branch of that power authorizes laws relating to a matter of national concern—and of course the reduction of greenhouse gases is a matter of national concern—only if the matter is sufficiently distinct

Do you understand that, Mr. Bigras?

from matters of provincial concern. The vagueness—and this is basically the exact same point again—and the breadth of Bill C-377 have the potential to reach deeply into many fields of provincial authority. Obviously, the bill can deal with almost all human activity that contributes to greenhouse gas emissions.

So without more careful definition of the kinds of regulations that are contemplated, so as to make a distinct matter that the bill addresses, the bill is outside the national concern branch of peace, order, and good government.

My conclusion is that unless the bill is changed in the ways that Mr. Castrilli suggested in his closing phrases—and these would need to be quite radical changes—the Parliament of Canada simply lacks the power to enact Bill C-377. If Parliament were to enact the bill, it would be struck down by the Supreme Court of Canada.

Then there are some interesting remarks by Professor Stewart Elgie, of the faculty of law at the University of Ottawa, the associate director of the Institute of the Environment, as he testifies as an individual. You would probably know him on a personal basis. He said some things that actually parallel, back up, or corroborate, stated in slightly different terms and ways, what Mr. Hogg had to say.

● (1700)

Then Mr. Godfrey had some interesting questions. It would be good if he were able to hear this again today. But he raises some intelligent questions here, and he addresses Professor Hogg on the issue of “POGG”—peace, order, and good government—if I may put it that way. He says:

First of all, I'd be interested in your response—if I have treated your argument unfairly about the urgency of the matter.

Then he would like to know about the various suggestions put forward by Mr. Castrilli and Professor Elgie “to be more explicit about CEPA, for example, and to tie it in with the language of Bill C-288, to use formulary language that we know about and that has a precedent” that would help with some of Mr. Godfrey's concerns and criticisms.

So Professor Peter Hogg says:

As a matter of constitutional law, the analogy with wartime is probably not affected. In the First World War and the Second World War the War Measures Act authorized the entire government of the nation to come under regulation, including areas that in peacetime had been completely under provincial authority. That was done because of the emergency power of peace, order, and good government.

I think Mr. Trudeau actually enacted that as well, did he not, the War Measures Act in the province of Quebec. So those are sweeping kinds of powers.

The Chair: Perhaps you could keep on the climate change issue. I don't find a lot of relevance in the War Measures Act in this one.

Mr. Jeff Watson (Essex, CPC): You just lost him.

Mr. Maurice Vellacott: Mr. Chair, in fairness, it was in reference to the peace, order, and good government and how that War

Measures Act has broad and sweeping kinds of powers. You don't really want to go there very often—pretty infrequently. So on this particular bill that we have before us and the kind of reach of a bill of this sort, you could bring it under that kind of a comparison. That's the point here. So I'm being on topic here by what Professor Hogg says:

The emergency of power of peace, order, and good government will not permit temporary legislation as sweeping as that which is contained in this bill.

And that's the point. So this is not comparable to the War Measures Act. Peace, order, and good government is of a different order.

He says:

There might be room for disagreement on this, but I don't think a court would say that we are facing an emergency comparable with the First or Second World War and that comparably sweeping emergency legislation is warranted. I don't think this works as a matter of constitutional law.

He says this very pointedly again. He continues:

I agree entirely with Mr. Castrilli and Mr. Elgie that if the bill were made more specific, there would be a better chance of its holding up. I think it's easier to do a good deal under the criminal law power, because that's what CEPA is enacted under. Much of what can be done to reduce greenhouse gas emissions can undoubtedly be done through amendments to CEPA, and we have a ruling that CEPA is a valid criminal law. So if the bill were more narrowly drafted—especially if, as Mr. Castrilli mentioned, it was reframed as an amendment to CEPA—

And I know Mr. Cullen is taking careful notes here on this part.

I think we would have a valid criminal law. But of course you can't do everything under the criminal law power.

He doesn't agree with his colleague here, Mr. Elgie, “that it's easy to fix it up under the peace, order, and good government power.” He references the Crown-Zellerbach case and says:

...that is the precedent for applying peace, order, and good government. In this case, the federal government passed a law, the ocean dumping act, that prohibited dumping at sea. The court said this could be upheld under the “national concern” branch of peace, order, and good government. The application of the decision was limited to dumping from ships in marine waters.

The court was divided. Mr. McGuinty knows that he rather contradicted me in terms of the split there. He further says:

The majority upheld it, but Justice La Forest, speaking for the minority, said the topic of marine pollution was not sufficiently distinct—it could lead to federal regulation of industrial and municipal activity, resource development, construction, and recreation, because all these matters contribute to marine pollution.

He goes on to say:

It seems to me that if we limited this to defined greenhouse gases, we would still have to face the potential for regulation of energy production, transportation, buildings, homes, appliances, agriculture, and forestry. All of these things could be regulated by the Governor in Council, under federal legislation, because all of these things would contribute to the reduction of greenhouse gases. I don't think peace, order, and good government will sustain anything as broad as that.

•(1705)

Mr. Bigras noted that Professor Hogg was sending us the message that the bill needed to be rewritten in order for it to make sense. “I am under the impression”, said Mr. Bigras, “that in many cases these amendments could be ruled inadmissible.” He was referring to some that had to be checked out here. Then there was his question in respect to signing up equivalency agreements with provinces in certain sectors: “Would it would be possible to envision [such] arrangements, not regulatory arrangements but agreements based on results, such as those...integrated in Bill C-288?”

Professor Peter Hogg says:

If the regulation-making power were limited to the kinds of things suggested in the various subheadings in subclause 10(1), in the ways that have been suggested by Mr. Elgie, there would be a much stronger case for upholding the legislation. But as clause 10 stands at the moment, it is simply a list of possible things the Government of Canada might...do to ensure that it will meet its clause 5 target. It doesn't impose any limitations. In fact, if the Government of Canada decided to do completely different things to achieve the targets, clause 10 would not be violated. It's really a reporting section rather than a section that limits or guides the actual regulation-making power of the Governor in Council.

So there are very broad, sweeping powers there.

He goes on later on in his testimony, and again he talks about case law in the country, federal law binding provinces, and so on. He concludes at the end that if the bill were constitutional....and he says “I'm saying that in its present form it is not”. And he's pretty precise about that. Then he actually makes a point, “yes, I believe it could have closed down Ontario's”—Mr. McGuinty would be interested in this one—“coal-fired electricity generating stations.” I would assume he was referring to Mr. McGuinty's election promises probably, but that was a reference just at the very end of his brief.

Again when you look at Bill C-377, it's not properly costed; it's not constitutional; there are issues with it. The very fact that we have to have the NDP... Jack probably was kind of busy when he scribbled or scrambled this thing together, because it has to be amended significantly by his own party. This is rather uncommon, rather irregular, unheard of, you might say, to be amending significantly your own bill. So there were obviously issues. He's a busy man, and he's across the country, and in Toronto and other places like that, but not too much in my province. He would probably not want to hurt it quite as badly if he understood the impact on the province of Saskatchewan.

Just as recently as the other day again, the government has been confirming and carrying on that steady progress forward in terms of a cleaner, healthier environment, and very pointedly in terms of what will be done there. The government has a very comprehensive ecoACTION plan, making progress on preserving and enhancing the environment, improving air and water quality, reducing greenhouse gas emissions, and addressing the health effects of environmental contaminants. A key element of that plan, as I referred to before, is the regulatory framework for industrial air emissions, which will impose binding national regulations on greenhouse gas emissions and air pollutants across all major industrial sectors. The ecoACTION plan also includes a mandatory fuel efficiency standard—which I think is long overdue to happen—for new cars and for light trucks for the 2011 model year, as well as standards and regulations for other forms of transportation; renewable fuels; and the energy efficiency of consumer and commercial projects.

So those are the kinds of practical things that we've been kind of—

•(1710)

The Chair: Mr. Vellacott, if you could, try not to repeat yourself. Stay on the topic as much as you can.

Mr. Maurice Vellacott: Okay, I'm moving into some new—

The Chair: Attempt to come into some new material.

Mr. Maurice Vellacott: You bet. Absolutely. For sure. That's crucial, Mr. Chair, and I endeavour to do that. I've got some pretty crucial key things, new insights for all of us here, in the remaining minutes that we have.

Budget 2008—again, we're contrasting this, the practical, pragmatic kind of approach that we're taking as a Conservative government, with Bill C-377, which Mr. Layton got together quickly and which needs some significant amendment.

The measured, thought-through kind of plan, the progress that can be made with new measures to strengthen and to ensure effective implementation of Canada's eco-action plan, provides funding actually to implementing regulations that will lead to those significant reductions in greenhouse gas emissions and improvements in air quality, and proposes additional incentives that will advance progress in cleaner energy generation and use.

It also improves Canada's capacity to enforce—

Hon. Larry Bagnell: Point of order. In spite of the chair's warnings, this is the third time the member has gone over the same material. I would ask the chair to rule that it's repetitive and that we move on to the next speaker.

The Chair: Mr. Vellacott, if you can, please get into new material and not repeat yourself. It's bothering some of the members. I would ask you to just carry on, but carry on into new material, please.

Mr. Maurice Vellacott: That's fair. I don't want to offend members here. Far be it from me to do that on something so crucial as this issue.

I think it's true that Canadians want some practical solutions. To have something kind of vague, and again, as we said, we've repeated that, and that's for emphasis here, of course the ambiguity of Bill C-377....

I think we want the balanced kinds of solutions to environmental protection and economic growth. It means that those economic decisions are environmentally responsible. They absolutely have to be.

Back on February 14, 2007, the House of Commons passed Bill C-288, an act to ensure Canada meets its global climate change obligations under the Kyoto Protocol. Section 3 of that bill stated that the purpose of that act is to ensure that Canada takes effective and timely action to meet its obligations under the Kyoto Protocol and help address the problem of global climate change.

If Bill C-288 is approved by the Senate, subsection 7(1) requires that within 180 days of the act coming into force, the Governor in Council will ensure that Canada fully meets those obligations under article 3, paragraph 1 of the Kyoto Protocol, by making, amending, or repealing—

Mr. Mark Warawa: Point of order. Mr. Chair, I've been listening intently to Mr. Vellacott, and we're getting repetitive baiting and interruptions coming from across the table. He has the right to speak. I encourage each of us around this table to show some manners and listen intently. Thank you.

• (1715)

The Chair: Again, Mr. McGuinty, please address your comments, points of order, and so on to me. Try to rivet yourself on Mr. Vellacott's comments.

Mr. David McGuinty: Could I respond to the point of order? For Mr. Warawa's benefit, just below the table there's a little circular dial. It controls the volume on the earpieces that we wear. It would be helpful if you would turn—

The Chair: Thank you for your assistance, Mr. McGuinty.

Let's carry on, please.

Mr. Vellacott.

Mr. Maurice Vellacott: I think he's attempting to be good-natured about it, so I'm not really bothered much at this time. I'll carry on.

When you look at Bill C-288, some things Bill C-377 should be doing are the kinds of things we see our government doing—the things it has projected ahead in Bill C-288 and the costing for them. The purpose of Bill C-288 is to examine the economic implications. We don't have any proper costing in Bill C-377 as it stands, and that's the difference. We have something of a costing document here in Bill C-288, looking at the economic implications of it. My colleague Mr. Warawa, right at the top of the meeting here, wants this to be properly costed. It's the big rub here; it's the big problem with the bill before us now. That was done in Bill C-288. We don't find that in Bill C-377. But if we could get something like that with its thoroughness, it is the kind of thing necessary as a prelude to moving or making any kind of progress on any bills before this committee.

The objective of the act requiring us to meet our Kyoto obligations over our commitment period from 2008-12 is real and creditable. In December 1997, Canada and 160 other countries that are members of the United Nations Framework Convention on Climate Change met in Kyoto to conclude a protocol on the convention to limit emissions of greenhouse gases, or GHGs. The resulting agreement, as regular members of this committee know... Mr. Pearson doesn't sit here regularly, but I think he follows these issues or attempts to keep on top of them as well. The Kyoto Protocol entered into force on February 16, 2005. It was signed by Canada on April 29, 1998, and ratified in 2002.

Under the terms of that Kyoto Protocol, 38 industrialized countries, known as annex 1 countries, committed to cutting their emissions of greenhouse gases, between 2008-12, to levels that were at least 5% below 1990 levels.

In terms of individual country targets, Canada is required to reduce emissions to a level 6% below 1990 levels by 2008-12. As a group, the European Union has a target of 8% reduction from its 1990 levels. The United States, which did not ratify the protocol, had a target of 7% reduction from the 1990 levels, while several other countries, one of them being Australia, which also did not ratify, was

permitted to let its emissions continue to grow above 1990 levels, but at a reduced rate of growth.

China and India—and we've made much of that in this committee—two of the largest and fastest-growing economies in the world, both ratified the Kyoto Protocol. They're not required to reduce their emissions under that current agreement.

So that's the global context.

The science underlying climate change tells us that there are human-caused emissions in GHGs. I think that's what members around this table like Mr. Cullen want to get at. I think the good intent of all the members is to get at this issue and do what we can about human-caused emissions of GHGs, resulting primarily from the combustion of fossil fuels for energy. That's a significant driver or escalator of global warming.

Global energy use trends are therefore at the centre of the issue of climate change and are tied to global economic growth projections. In fact, according to world energy outlook 2006 of the International Energy Agency, world energy demand will increase by 53%—and this is important—from 2004 levels by 2030, with 70% of the increase coming from these developing countries. Similar energy and emissions growth projections are made in the IEO 2006 by the energy information administration.

• (1720)

There are charts of that kind of stuff that we can provide for the committee if they so wish.

According to the EIA, fossil fuels remain the dominant source of world energy, accounting for about 83%.

Mr. David McGuinty: It's 84%.

Mr. Maurice Vellacott: Okay, we're out by a percent there, but 83% is what my records indicate. The member across the way, who has his facts right occasionally, could be right. But it accounts for 83% of the overall increase in energy demand between the year 2004 and 2030.

Power generation accounts for about 47% of this increase, and according to both the IEA and the EIA, the world's remaining economically exploitable energy resources are adequate to meet the projected increases in demand through the year 2030. In the absence of that, of any new government action, global energy-related carbon dioxide emissions are going to increase by 55% from 1990 to 2030 if there's no government action taken, with developing countries, primarily China and India, being responsible for about three-quarters of that increase. So that's very significant on their part. Developing countries' share of global emissions overtakes that of the OECD countries soon after 2010. China then becomes the world's largest emitter prior to 2010.

With some of those that were the signatories there are some fairly significant differences. I think, in the context of this particular bill and the context of doing something in Canada in respect to this very important issue of GHG emissions, it was acknowledged that there were significant differences in the progress of various countries toward reducing greenhouse gas emissions.

Overall the European Union, the EU, has kept its emissions stable at around 1990 levels; they started at this a bit sooner. Within the EU, Germany and the UK are some of the most advanced in terms of actually reducing their emissions since 1990.

In the case of Germany, for example, that resulted in part from some major economic changes following reunification. I think that's not unimportant, and it was raised by Luc Harvey, my colleague, in terms of the costing here, because there will be a cost, there's no question about that. We just need to understand that, get a handle on how much the impact will be, and who is going to carry and bear the burden of that, whether it be individuals or corporations.

I think we've made a choice in this country that the big polluters are going to pay, and as individuals we will do our part too. But in Germany, following reunification, it saw the closure and the replacement of economically non-viable industrial facilities of the former East Germany, as well as some fairly proactive government policies, such as the introduction of a carbon tax in that country.

And for the United Kingdom, success in reducing emissions arose from a combination of government policies introduced since late 1990s, and it benefited as well from a long-term trend away from coal as a primary source of domestic industry and household energy.

A little more generally, the fact that the EU has assumed a collective target and the evolution of that organization as it's grown over these past 18 years, since 1990, have worked to its advantages in terms of its ability to meet and even expand upon its Kyoto targets.

Under article 4 of the Kyoto Protocol, the 15 member states of the EU—before it expanded and added some more in 2004—were to collectively meet a GHG reduction target of 8% of 1990 levels by 2012.

All of that is a background to say that these countries started sooner, they progressed, they advanced, and they were able to compensate some of their member states as well for not achieving their targets—Denmark, Ireland, Italy, and Spain. In particular, reunification with the former East Germany allowed Germany, which was the largest European economy, to take on that deep reduction target. So they were in a little different situation from what we are as a country here, and we'll have to chart our own path and forge our own way ahead, which may be different from other parts, particularly the European Union.

● (1725)

Some of those new economies in transition in those EIT countries are now within the 27-member-state European Union, and they still remain well below their Kyoto targets. Some of these EIT Countries—the Czech Republic, Hungary, Poland, and Slovenia—are now experiencing rapid economic growth. I was in Slovenia last fall, and there's some pretty good new stuff happening in that country, some rapid growth. But it has resulted in GHG emissions increases as well, a 4.1% increase in those countries over the period 2000 to 2004. So, overall, the presence of these EIT countries within the EU, and their economic situations, will contribute greatly to their collective ability to meet both their Kyoto objectives and their recent commitment to reducing emissions by 20% from 1990 levels by the year 2020. So all of that is some background in terms of the cost to Canada here.

As well, just to understand some of the GHG emissions by region and selected countries, in some of the other developed countries, including Canada, the United States, Australia, and Japan, emissions have increased, in some cases very significantly, from 1990 to 2004. However, the most dramatic emissions increases have come in the developing Asian economies—I think we're all aware of that—in countries like China and India, in particular, where economic growth and energy demand have begun to really take off. If you look at it on the chart, you just see a spiking upward exponentially. So despite some progress made by some of the countries, the so-called annex I countries in the Kyoto agreement, and some of the projects mentioned in the *World Energy Outlook 2006*, total emissions of annex I OECD countries in 2010 will be 29% above the targets set out in the protocol.

But again, our situation is different. I think, Mr. Chair, you would understand that, and so would members of the other parties who have been outside their ridings and their provinces, as I'm sure all have from time to time. I understand that Canada's geography and economy are a little different. Canada is actually the second largest country in the world. Our average and our seasonal temperatures vary widely all across the country. It's not a little country tucked into some part of the globe up against the ocean that you can traverse in a few hours; it's much more than that. If you're a member of Parliament and you come from the west, you just realize how long it takes, and if you drive it, it will take you several days, which is to say, we've got that variance and those changes all across the country in terms of the temperatures. We have hot summers and long and extremely cold winters in parts of the country, such as my region.

Canada's population back in the year 2005 was 32.8 million, with 80% living within 160 kilometres of the 6,400-kilometre-long border with the United States. That distribution illustrates Canada's high level of economic integration with the U.S. Our low population density as a result of the big geographic spread of our country, and the heating and the cooling and the transportation associated with the Canadian context all contribute to our high energy demand and high per capita greenhouse gas emissions. We have different requirements, different needs, from any of these other countries. So you have to keep that in mind and take that into account when you're doing that—

The Chair: Mr. Vellacott, you do have the floor, and given the motion, you can, of course, continue talking, but I'm a little worried that you're going to beat my record. So with your permission, what I would like to do is to ask for a motion of adjournment; and if I get that, with your permission, we would then adjourn this debate, and maybe you could stay afterwards and you and I could talk.

● (1730)

Mr. Maurice Vellacott: You don't get paid enough, Chair.

The Chair: Do I have your permission?

Mr. Maurice Vellacott: I guess so. I'd like to go on, but I guess if you—

The Chair: I can tell you're very anxious to go on.

Do I have a motion to adjourn?

Mr. Cullen.

Mr. Nathan Cullen: Chair, I move that we adjourn this fiasco and remind our colleagues from the Conservatives that if they have concerns about the bill, then they should do their work and bring amendments; and we would entertain those amendments. But as they are right now, they are doing harm to their personal reputations, and are continuing the legacy of this government's failure on the environment.

I move to adjourn.

The Chair: Thank you.

Just before everyone leaves, could you think about the witnesses for Bill C-474 and try to get those names to us, say by next Thursday or thereabouts? Just keep that in mind.

Thank you.

The meeting is adjourned.

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