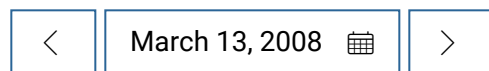


REGS COMMITTEE MEETING

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Meetings (REGS)

Proceedings of the Standing Joint Committee for the Scrutiny of Regulations

Issue 6 - Evidence, March 13, 2008

OTTAWA, Thursday, March 13, 2008

The Standing Joint Committee for the Scrutiny of Regulations met this day at 8:35 a.m. for the review of statutory instruments.

Senator J. Trevor Eyton and Mr. Derek Lee (*Joint Chairs*) in the chair.

[*English*]

The Joint Chair (Mr. Lee): I call the meeting to order. I see a quorum. We do not often have witnesses appearing before this committee, but we certainly do today. From this point forward in the meeting, I will turn the gavel over to Senator Eyton.

The Joint Chair (Senator Eyton): Thank you. It is unusual, too, for Mr. Lee to turn the chair over to me, but I am pleased to do it.

Welcome to all and, in particular, to our witnesses, Mr. Janelle and Mr. Martin. They are here from Ottawa, representing respectively the National Farm Products Council and the Agriculture and Agri-Food Canada organizations. A special welcome to our B.C. witnesses, Mr. Hrabinsky

and Mr. Leroux, who are representing the BC Vegetable Marketing Commission. Thank you for appearing. We expect this unusual session to be a very interesting one.

I would like to suggest that our counsel make some remarks to frame our discussion on the issues, and then the four witnesses before us could make comments. After that, we will follow with questions.

The first item on our agenda deals with SOR/2002-309. Mr. Bernhardt will lead off and frame our discussion.

SOR/2002-309 — ORDER AMENDING THE BRITISH COLUMBIA VEGETABLE ORDER

(For text of document, see Appendix A, p. 6A:1)

Peter Bernhardt, General Counsel to the Committee: By way of background, legislative authority over the marketing of agricultural products within a province lies with the provincial government. The marketing of agricultural products outside the province is within the legislative authority of the federal government. The situation is such that a comprehensive marketing scheme requires legislative action by both levels of government. Typically, this involves creating a marketing board by provincial legislation, with powers over marketing within the province. Then you have federal legislation that delegates parallel powers to that body in respect of marketing outside the province.

As far as the imposition of marketing levies is concerned, provincial legislation is required, imposing a levy on products marketed within the province, and federal legislation imposing a levy on products marketed outside the province. Typically, the amount of the two levies is identical. This allows for the collection of a single amount without the need to distinguish between products intended for marketing within and outside the province. What has to be kept in mind, however, is that in law two separate levies need to be imposed and collected. For practical purposes, this may not be the case, but in law it certainly is.

In the present instance, we have the British Columbia Vegetable Order. This authorizes the BC Vegetable Marketing Commission to "fix and impose by order" levies and charges on persons engaged in the production for, or marketing of, vegetables in interprovincial or export trade. However, no orders or regulations made pursuant to this order have ever been registered or published.

It seems evident that any such orders or regulations would come within the definition of "regulation" under the Statutory Instruments Act. This being the case, they are required to be registered and published. Indeed, the act provides that they do not come into force until they are registered.

At its December 13 meeting, the committee noted that it had been 19 months since the absence of any valid order fixing and imposing levies on persons engaged in production for, or marketing of, vegetables in interprovincial or export trade had been identified. No such order had yet been put in place.

In view of this, the commission was advised in a letter from the joint chairmen that, in the committee's view, remedial legislation should be introduced, retroactively validating the collection of levies, assuming as a practical matter that there was no way to return those levies to those who paid them in the first place.

The committee also wished that representatives from the National Farm Products Council as well as from the BC Vegetable Marketing Commission appear with a view to providing an explanation as to why the present situation arose as well as why it has not been rectified over the past year and a half.

The Joint Chair (Senator Eyton): Thank you, counsel.

We will now hear from representatives of the National Farm Products Council and the BC Vegetable Marketing Commission. Please proceed.

Robert Hrabinsky, Legal Counsel, BC Vegetable Marketing Commission: The BC Vegetable Marketing Commission has prepared a written brief, which has been distributed to members of the committee. In addition, Mr. George Leroux, Chair of the BC Vegetable Marketing Commission, will have opening remarks to make, as will the National Farm Products Council and Agriculture and Agri-Food Canada.

George Leroux, Chair, BC Vegetable Marketing Commission: Good morning. Counsel has framed the issue from your perspective. I will try to respond to some of the questions in your letter that was sent to the National Farm Products Council on December 18. That letter was addressed to council, not to the commission, just as a matter of record.

In British Columbia, the government appoints chairs to marketing boards. These chairs are independent. They are not growers. That is unlike many of the marketing boards in the country. I am an independent chair. I am not a grower. I am a business person. My experience is in agricultural processing, feed grain milling, meat processing and that sort of thing. I have no experience personally in the vegetable industry. The government does that for the purpose of providing governance to farmer boards.

It is my understanding, and I think this has been mentioned by counsel, that the underlying intent of agricultural commodity regulation in the country is to have a unified and cooperative system for the marketing of these commodities intra-provincially, interprovincially and in export markets. The commission very clearly understands that the jurisdiction with regard to interprovincial and export lies with federal legislation.

The question that causes me to come here today is a very serious one, as it has been explained to me. I am not a lawyer. I think many of you may be lawyers. I will state up front I am not a lawyer, so some of the legal nuances will escape me. The issue is one that causes serious concern about vulnerability to challenge under the Statutory Instruments Act. The scope of this vulnerability may well extend beyond levies and, in fact, may reach back to all orders issued by the BC Vegetable Marketing Commission since 1981 because they rely, in whole or in part, on federal authority and the interaction of that federal authority with provincial authority.

Since this issue was brought to the commission's attention on April 4, 2006, by way of a letter from National Farm Products Council being forwarded to us with a copy of your letter of April 3, 2006, it is fair to say that the organization has worked with National Farm Products Council, Agriculture and Agri-Food Canada, the Farm Industry Review Board, which is the National Farm Products Council equivalent in British Columbia, as well as the Department of Justice Canada to try to respond to these concerns and get an order in place. The commission has worked steadfastly toward this solution and appears before you today with that objective in mind.

There has been a certain amount of documentation filed with your committee. I think it will demonstrate that there has been considerable interagency communication directed to addressing this matter.

The commission collects levies from all producers of regulated vegetables produced in B.C. Vegetables are commodities. Levies are assessed on production volumes and production area. The amount of total levy assessed approximates \$625,000 a year. I can provide specific numbers, but over the past six years it has averaged about \$625,000, plus or minus depending on annual budgets and that sort of thing.

All regulated vegetables produced in B.C. are marketed from the farm gate to an agency. An agency is a provincially registered and licensed marketing entity. In addition to B.C. product, these agencies will source product from other provinces, from the United States, from Mexico and, more recently, from China. They develop year-round marketing programs with their available supply to meet their marketing needs. Increasingly, those needs from the marketing channels are requiring 12-month supply programs.

From a practical perspective, B.C.-based licensed agencies are the first receiver of regulated vegetables produced in the province and levies are only assessed on vegetables produced in the province. There is no levy assessed on any vegetables the agency purchases from another province or from import markets.

Agencies generally pool the vegetables they receive. Let us take potatoes as an example and let us say you are all producers of potatoes. All of your potatoes are put together, sold and returns are equalized amongst you. There are standards on grade and cull-out rates, but in essence you all receive the same price per kilogram or per tonne for your vegetables.

From a sales perspective, we cannot possibly differentiate based on individual growers or final consumer market. We can, however, make some general estimates with regard to the amount of product that may go into export markets. We can discuss that when we come to it.

To answer one of your questions, the commission was aware of the 2002 order at the time it was enacted. In fact, the commission was aware of the vegetable order since it was first promulgated in 1981. Since we were first made aware of the possibility of challenge based on the Statutory Instruments Act, it is fair to say the commission has taken the matter seriously. However, we do not view the outcome of any such challenge as a foregone conclusion. As provided in our brief, there are arguments that can be advanced in response to a challenge. However, it would seem to be prudent to try to avoid a challenge and eliminate the cost, both in time and expense, of legal challenges and all of the chaos that comes with them.

We have applied pretty significant efforts, to the best I can determine, to the promulgation of a new vegetable order to make it plain there is no requirement to publish orders made by the commission in the *Canada Gazette*. The commission, frankly, is not aware of all the facts why a new order has not been promulgated and why settlement of this matter has taken, to quote your letter of December 18, "more than 19 months" since it was identified.

I certainly appreciate your frustration that this matter has not been resolved. I think I can say I am equally frustrated it has not been resolved and has taken two days of time to come here to deal with it.

I can assure you that the commission has not operated, nor does it intend to operate, outside the spirit of cooperative provincial and federal regulation concerning the production of vegetables. As a vulnerability identified in 2006 may well extend to all orders made by the commission since 1981, we too are anxious to find a solution.

We have put forward in our documentation to you that we propose that legislation be enacted retroactively and retrospectively to exempt the commission from registration and publication requirements of the Statutory Instruments Act; and, second, that promulgation of a new order with the words ``by order'' removed occur at the earliest possible time.

The Joint Chair (Senator Eyton): Mr. Hrabinsky, do you have anything more to add from the point of view of the commission?

Mr. Hrabinsky: Not at this time, although when questions are posed, I am available to respond.

The Joint Chair (Senator Eyton): Please proceed, Mr. Janelle.

[*Translation*]

Claude Janelle, Executive Director, Office of the Chairperson, National Farm Products Council: Thank you, gentlemen. We appreciate the opportunity to appear today before the Standing Joint Committee for the Scrutiny of Regulations. We recognize the important role of this committee in reviewing regulatory actions to ensure that they are in conformity with the powers delegated by Parliament.

I would like to thank the clerk for agreeing to delay our appearance until today, so that the representatives from British Columbia could attend.

I would like to recognize their presence. We are pleased to have them with us. My name is Claude Janelle and I am the Executive Director of the National Farm Products Council. With me is Paul Martin, a director general from Agriculture and Agri-Food Canada. Mr. Martin is responsible for policy issues arising with respect to the Agricultural Products Marketing Act (APMA) delegations, while I am responsible for handling administrative issues regarding these delegation orders and regulations that the provincial boards may make wish to make under them.

As you probably all know, the administration of the APMA is performed by the National Farm Products Council within a policy framework that has been designed by Agriculture and Agri-Food Canada.

I would now like to turn this over to my colleague, Paul Martin, to speak about this policy framework.

[*English*]

Paul Martin, Director General, Sectoral Policy Directorate, Agriculture and Agri-Food Canada: Today's discussion is about a specific order of the BC Vegetable Marketing Commission, which operates under the supervision of the British Columbia Farm Industry Review Board. We are aware that similar questions have been raised in other discussions about other provincial orders, so we thought it would be helpful to set out some of the general context.

Some members of the committee may recall that in February 2002 the then Deputy Minister of Agriculture and Agri-Food Canada, Mr. Watson, made a presentation to this committee and explained AAFC's policy on the administration of this act. As he explained at the time, AAFC's view is that provincial boards receive delegated powers under the Agricultural Marketing Programs Act, or APMA, to do with products moving in interprovincial and export trade what their provincial authority allows them to do with respect to products marketed within the province. Quite often, those powers are used to impose levies.

Where the Governor-in-Council has delegated that authority, the provincial boards in question are responsible for using it in conformity with the law, and they could be subjected to legal action by someone who felt that a levy was not appropriately authorized.

AAFC and the National Farm Products Council have a role in ensuring that provincial boards understand what is required to put a levy in place and to encourage them to take the correct steps. We also ensure that provincial boards are aware of any concerns raised by this committee with any measure and strongly encourage them to respond in a timely way to resolve those concerns.

However, we do not have powers to supervise boards created by provincial governments under provincial authority. Once a delegation is made, the provincial board is responsible for using it unless and until it is revoked by the Governor-in-Council, which, as Mr. Watson made clear, is something we would only expect to see in extreme circumstances.

With that as general background, Mr. Janelle will talk about the questions that the committee addressed to the NFPC in its letter of December 18, 2007.

[Translation]

I would now like to respond to the questions posed by the committee regarding the council's role in the administration of this act. These are questions 23, 24 and 25 in the letter of December 18, 2007.

The committee asked what is the council's role in the administration of the act. Our role is to assist the boards and commissions by steering their orders and regulations through the federal regulatory process. We also ensure the delegates are aware of the requirements of the act, and ensure the communication of any concerns raised, for example by this committee, with any actions taken by any delegatee under the powers conferred by the act.

The committee also asked if the council has a responsibility to ensure that boards and agencies are aware of the requirements for exercising federal powers, and what steps it takes to carry out this responsibility. The council has a role in ensuring the delegates are aware of their responsibilities in the exercise of powers delegated under the act, and we have undertaken considerable efforts in recent months to discharge that responsibility.

In 2006, my predecessor toured Canada, meeting with the provincial supervisory boards and most commodity organizations holding delegation orders. The objectives of this tour were to explain the current application and interpretation of the APMA, to clarify the rights and specifically the responsibilities of the commodity organizations and the National Farm Products Council. We also advise commodity boards and commissions of their responsibilities through individual correspondence as issues arise.

I hope that this has clarified your understanding of our role as administrators.

[English]

The Joint Chair (Senator Eyton): Before we go to questions, does counsel for the committee have comments on the presentation?

Mr. Bernhardt: I have a question for the witnesses, if I may.

I note that in November 2006 a draft levies order was created. I understand that the Department of Justice had an issue with that, and a decision was made not to proceed with the order. Why was it not simply a case of amending the draft and proceeding to put the levies order in place back in November 2006?

Mr. Hrabinsky: I will attempt to respond to counsel's question.

I refer the committee to the written brief submitted by the BC Vegetable Marketing Commission. Appended to that brief is a fairly comprehensive chronology of events with supporting documents.

In answer to counsel's question, I would say that as this matter unfolded from the time that the commission was first alerted to this serious problem in April 2006, three tracks were being pursued, simultaneously at times. There was the question of the preparation and submission of a levies order for registration and publication in the *Canada Gazette*, to which counsel has referred. There was also a project undertaken by the National Farm Products Council to review all of the APMA delegation orders. The project contemplated that efforts would be made to submit new regulations that would remove the words "by order" or sometimes "by order or regulation" in those orders to obviate the need to register and publish orders in the *Canada Gazette*. Certainly, that occupied much of the commission's time and efforts.

The third track I referred to had to do with the repeal of an order made under the APMA entitled the "British Columbia Interior Vegetable Marketing Interprovincial and Export Board Order." There was some delay associated with it because the view of Justice Canada, as I understand it, was that the regulation, which had become anachronistic and needed to be repealed, had to be dealt with first before efforts could be pursued to promulgate a new vegetable order that removed the words "by order." In short, the commission did attempt to submit a levies order.

By the time we received word from Justice Canada that there were concerns with that order, we were well on the path of submitting a new vegetable order that would remove the words "by order." It is safe to say that the commission was of the view that the promulgation of that new order was imminent, but clearly it was not. However, our efforts were directed on that track at the time.

The Joint Chair (Senator Eyton): Are there other comments from the witnesses? Seeing none, we will go to questions.

Mr. Wappel: To frame my understanding of this matter, does the National Farm Products Council accept that the Statutory Instruments Act applies and that these orders should have been registered since 1981?

[Translation]

Mr. Janelle: We agree that the levy requirements have not been registered and published.

[English]

Mr. Wappel: Mr. Martin, do you agree?

Mr. Martin: Yes.

Mr. Wappel: What precisely has the National Farm Products Council and Agriculture and Agri-food Canada done since 1981 to educate provincial commissions as to their responsibilities?

[Translation]

Mr. Janelle: I have a little difficulty answering that question, because I know that, the year before I took this position, in September 2006, my predecessor toured Canada to explain the act, the requirements, and the role of each and every party to the agencies, the provincial boards and the commodity organizations. He also explained the objectives that they had to achieve in order to be in conformity with the act.

That was done in every province, and I had the opportunity to wrap up the tour by visiting Quebec.

[English]

Mr. Wappel: I know, but come on. This has been going on for 25 years. According to Mr. Martin, we heard that Mr. Watson discussed this issue in some manner back in 2002. I am sure a few of us were here.

If I understood you correctly, Mr. Martin, it was almost as if you said that there is really not much that Agriculture and Agri-Food Canada can do, short of delisting them or taking away their rights or removing the delegation order. I think that is what you said. Indeed, that is precisely your remedy. To protect the rights of the federal government under the Constitution, it is your responsibility to educate commissions; and if commissions do not do what they are supposed to do under the law, you take their delegated authority away until they do so.

It is pretty clear. Instead of letting something go on for 25 years, it is your responsibility — and I do not mean you two gentlemen, but rather the departments for whom you work — to ensure that these various provinces, since these are provincial boards, be advised of their delegated responsibility to exercise federal authority. I think you have dropped the ball badly. As a result, the poor commission is running around trying to answer our questions. By the way, I will get to that in the next round of questioning if I have a chance.

It would have been very helpful to this committee if the brief had been received a year or six months ago. We received an interesting and helpful letter from a gentleman named Jim Collins, General Manager of the British Columbia Farm Industry Review Board, which succinctly put forth a couple of interesting points. It would have been nice if we had received it six months ago so our counsel would have been able to analyze the 89-page brief and the letter, and come back to us with his and his colleagues' opinions with respect to the potential arguments. It would have been nice if six months ago we had heard, ``Yes, we would like to petition the federal government to bring in an act to do this retroactively." No one wants to drag people here from the other side of the country. It is very frustrating that it has taken this long and this much effort to get where we are.

Given the answer that Mr. Janelle and Mr. Martin have given us with respect to their responsibilities of education — and, I would say, policing and supervision — in my view, the council dropped the ball badly. I know Mr. Janelle has not been there very long and he has done what he can in the short time he has been there. Agriculture and Agri-Food Canada ultimately has responsibility for ensuring that the interests of the Government of Canada are protected.

Mr. Hrabinsky, you did see this letter of December 18, 2007, because it was in your brief; is that right?

Mr. Hrabinsky: That is correct.

Mr. Wappel: In your response, it would have been helpful if you had been able to go through it question by question, as they were posed, because I had great difficulty flipping back and forth in your brief to determine the answers to the various questions. As far as I can make out, the answer to question 1 is yes. I will not read the questions because it will take too long. Do you have the letter in front of you?

Mr. Hrabinsky: I will turn to it.

Mr. Wappel: December 18, 2007.

Mr. Hrabinsky: Mr. Leroux indicates that he will answer the questions.

Mr. Wappel: Is yes the answer to question 1, Mr. Leroux?

Mr. Leroux: Could I go through them quickly and answer them? It will just take a few minutes.

Mr. Wappel: It would have been nice if it had been done within two or three weeks of the letter, as opposed to March, but please go ahead.

Mr. Leroux: I returned to this about three or four days ago.

Mr. Wappel: I am not talking about you directly, sir.

Mr. Leroux: On question 1, yes; therefore, question 2 is not applicable.

Do we collect levies? We collect levies on all vegetables produced in B.C., regardless of where they are marketed.

When did this commence? It commenced since the commission was first established more than 50 years ago.

Was the commission aware of the vegetable order? Yes, to my knowledge it was, so number 6 is not applicable.

Has the commission ever made an order pursuant to the B.C. Vegetable Order? I would presume the answer to that is yes.

If not, why not? That would be not applicable.

If the orders have been made, why have they not been registered? Again, I cannot answer this. We have been talking about that. It could have been a lack of understanding.

Is the commission aware that orders must be registered? We have been since April 2006, when we were advised by the National Farm Products Council.

Is the commission aware that under the act they come into force upon registration? The commission is aware of that now.

When did the commission become aware of the April 3 letter? On April 4.

Did the commission collect levies in respect of vegetables marketed interprovincially or exported after this time? Does it continue to do so? The answer would obviously be yes.

By virtue of what legal authority? The same as it has been under provincial authority in the belief of that authority. As outlined in Mr. Collins's letter, he raises the issues around that authority, as you have pointed out.

Why does it remain the case that there is no order fixing and imposing levies? I think we have been discussing that. This has been ongoing since May 2006.

When will such an order be made? We hope it is very soon.

Are producers aware that they are under no legal obligation? I think this is a very interesting question. It refers back to ``under what legal authority," which has been outlined in Mr. Collins' letter.

For your information, as is outlined in Mr. Hrabinsky's letter, all our orders are posted on the Web. All growers and all interested parties have them available to them.

What steps? We always communicate with them.

Do we accept that money was collected unlawfully? No. We have relied on the authorities as we understood them, and the legal arguments have been put forward in the briefs by Mr. Collins and Mr. Hrabinsky.

What does the commission intend to do to redress its unlawful activities? Our answer to number 20 was no. However, we are hoping to get an order enacted to remove the vulnerability and hopefully mitigate future legal costs. I know that is not in Mr. Hrabinsky's interests, but it is certainly in the board's interests.

Number 22 is not our question; it is the council's question.

What is the total amount of levies? As I indicated earlier, it averages \$625,000, plus or minus \$25,000.

What percentage of vegetables produced in British Columbia are marketed outside the province? We basically have three categories of vegetables called storage crops, which are things like potatoes, turnips, rutabagas, onions; processing crops, such as frozen peas, corn, carrots, beans — things purchased from the freezer cabinet; and greenhouse vegetables, such as peppers, cucumbers and tomatoes, though tomatoes are a fruit.

The province tends to import not export. They may go into interprovincial trade. We have no way of knowing. However, by and large, due to the expense of transporting potatoes, they tend to stay close to where they are produced, unless you are from Prince Edward Island.

We have absolutely no way of knowing with regards to the processing crops. One processor is owned by Safeway, another is owned by Homestead out of Ontario and there are a couple of small ones. They would probably move their product fairly freely. Again, I think it is fair to say the majority would stay in British Columbia because we would be a net importer.

I would provide the estimate that 20 to 30 per cent of cucumbers are exported. Again, I cannot answer interprovincially. I would provide the estimate that 50 to 60 per cent of tomatoes would be exported on an annualized basis. Interprovincially, I do not know. With respect to peppers, the number would be closer to 70 to 80 per cent.

Does that answer your question?

Mr. Wappel: Yes, very well. Thank you.

Finally, are all the witnesses in agreement with Mr. Collins' very good summary of a way forward, namely, ``that legislation be introduced into Parliament retroactively excluding marketing boards and commissions from the scope of the Statutory Instruments Act, and retroactively validating all orders issued under the Schemes to the extent that they rely on delegated federal authority under the APMA"? Are all of you in agreement with that recommendation?

[*Translation*]

That is a policy question and I will let Mr. Martin answer.

[*English*]

Mr. Martin: This is an idea that has been put on the table and is one that bears examination at this point. I am not in a position to say whether the government intends to proceed in that way.

Mr. Hrabinsky: The answer is yes, although, to be as precise as possible, we regard those as alternatives. In other words, legislation could be enacted to retroactively and retrospectively exempt from the application of the Statutory Instruments Act or to validate the orders made by the commission since 1981.

Mr. Wappel: Who will do that? Who will run with that ball? Which of you will do that?

Mr. Martin: You are talking about what would presumably be government legislation. Therefore, if a decision to move in that way is made by the government, it would be the government's decision.

Mr. Wappel: Someone has to get the government's attention on this issue. Someone has to advise them that a potential legal problem is causing some difficulty and that the recommendation would be that the way out is, for example, the suggestion made in Mr. Hrabinsky's brief and Mr. Collins' letter.

Who would do that? Would the Deputy Minister of Agriculture speak to the Minister of Agriculture who would then speak to cabinet to make a recommendation? Who would it be? Is it this committee reporting to Parliament?

The problem has been identified. It would seem to me that it would be your responsibility to report that potential problem directly to the Minister of Agriculture, with a recommendation — whatever the recommendation may be; as you said, it is policy — that action be taken. I do not think it is fair to expect that the commission, a provincial body, should be doing it. Do you have any comment, Mr. Martin or Mr. Janelle?

Mr. Martin: I agree with you that if, in this case, a problem has been identified and ideas for a solution have been put forward, it is my responsibility to ensure that knowledge is transmitted up the system.

Mr. Wappel: How many "ups" exist above you to get to the deputy minister?

Mr. Martin: My boss reports to the deputy minister.

Mr. Wappel: It would be two steps. Thank you.

The Joint Chair (Senator Eyton): That was an interesting exchange. I suppose when looking at the question of how this can be fixed along the lines suggested, this committee will have some responsibility in that as well.

[*Translation*]

Senator Nolin: I would like to focus on the letter that we received on March 11. Mr. Hrabinsky, help me to understand. Your argument is based on the fact that there is no federal jurisdiction here. Am I right?

[*English*]

Mr. Hrabinsky: I would respond by saying "in part." We do present a different characterization of the problem or the issue. Having said that, I want to reiterate that the commission does, indeed, regard this as a very serious problem that needs to be addressed. However, we characterize it as a vulnerability to challenge. In other words, we do not believe it is a foregone conclusion. We do not believe that the fact that no orders have been made with respect to levies or otherwise under the APMA necessarily means that the commission, since 1981 or over any other time period, has been acting unlawfully or has been illegally collecting levies.

There are two bases upon which we hold that view. The first is that although, as Mr. Leroux has indicated, the market for vegetables is clearly one that we would call undifferentiated in the sense that we know this regulated product trades both within the province and outside the province, in my respectful view, that, in and of itself, is not enough to conclude that delegated federal authority is absolutely necessary.

One also has to look at the constitutional character of the regulatory scheme or the particular order made by the commission. In other words, to put it briefly: There are clearly instances where a provincial body might take steps to regulate a product that trades both within and outside the province but does not need federal authority to do so because of the constitutional character of the regulatory activity.

The second basis for our view that it ought not to be considered a foregone conclusion that the commission has acted in any way unlawfully is the character of the commission itself. We believe there are strong arguments that the commission can properly be regarded as a quasi-

judicial body, thereby exempt from the registration and publication requirements under the Statutory Instruments Act.

I want to reiterate that having said all of that, it does not mean that we think there is no problem. We clearly understand that there is a significant issue — a significant vulnerability to challenge — that needs to be addressed. However, we regard it as a vulnerability, not a conclusion of unlawful or illegal activity on the part of the commission.

[*Translation*]

Senator Nolin: Mr. Hrabinsky, this problem has been around since 1981. As I read one of the paragraphs of your letter, it refers to the legal opinion you received from your counsel. The first argument seems to form the basis of the opinion, and it was what constitutional English calls the "pith and substance" of regulatory powers. Your lawyers told you that this is not in federal jurisdiction and refers to the 2005 *Pelland* decision. But before *Pelland*, what was your argument based on?

[*English*]

Mr. Hrabinsky: The *Pelland* decision, in my respectful view, did not establish a new law. It was merely a recognition by the Supreme Court of Canada.

Senator Nolin: Production of agricultural products — food — is definitely provincial.

Mr. Hrabinsky: Yes.

Senator Nolin: You are trying to extract from *Pelland* something that it does not state. Commercialization of a product is different.

Mr. Hrabinsky: We are saying that one must have regard for the constitutional character of the specific regulation involved.

[*Translation*]

Senator Nolin: We are trying to avoid challenges too; it seems clear that, since 1981 in British Columbia, chaos has been just around the corner and it is this chaos that we are trying to avoid.

Before recommending the few regulations, however friendly they are, we have to come to a mutual agreement on the premises, the guiding principles of this stalemate. I do not even think we can agree on the guiding principles.

Do you see our problem? I understand the answer given by the officials from Agriculture Canada because they do not dare to stick their necks out. I do not think that the Department of Justice has any precise idea where this matter is going. Do you follow our dilemma?

[*English*]

Mr. Hrabinsky: I think so.

I would respond by saying that we clearly understand and appreciate the vulnerability that exists with respect to orders made by the commission since 1981. For the record, I should say that there has been a lot of talk about the imposition and collection of levies. If there is a

vulnerability — and we think that there is a vulnerability — it would extend to any orders made by the commission that would rely, in whole or in part, on delegated federal authority since 1981.

The vulnerability is clear and significant. We recognize it and, for that reason, we make the same recommendations that are made by Mr. Collins in his letter such that a new order be promulgated as quickly as possible and that legislation be introduced to retroactively and retrospectively validate what has been done since 1981.

As well, the issue may well not be limited to the BC Vegetable Marketing Commission. In one of the letters received from the National Farm Products Council, they referred to their initiative and said that of the 80-odd orders made under the APMA, 35 of them used the words "by order" or "by order and regulation" and some 40 did not use those words. There seems to be an uneven distribution of whether the words "by order" appear in the regulation, despite the fact that in many cases the actual function of the commodity boards is similar.

[*Translation*]

Senator Nolin: Mr. Janelle, I understand that you have not been there long, but I find it incredible that nothing has been done to come together or to try to spell out for your provincial counterparts a situation that has been going on since 1981.

There has to be some corporate memory in your organization — I understand that you were not there — but is there no way to dig in your files to find out what happened the year before you got there?

Mr. Janelle: Some things were done beforehand. We are doing things now. In fact, the tour that my predecessor made was the start of a deeper analysis of the entire matter. That has been brought up several times.

We are looking at ways of trying to improve the administration of the act and the relationship between the national council and the department. The discussions are not over yet. The National Farm Products Council has administered the act since 1995. I believe that my predecessor started the exercise after letters from and concerns raised by the provincial boards and commodity organizations. We hope that we will be able to get there and to try to see ways in which we can improve the system and our efficiency.

[*English*]

The Joint Chair (Senator Eyton): I should note for the committee that Mr. Jim Collins, General Manager of the British Columbia Farm Industry Review Board, is in the audience. While the context of his letter, to which we have referred, and his position are clear, I suspect he would be available to respond if members of the committee wish to address questions specifically to him.

Mr. Epp: For clarification, if I were a vegetable producer in British Columbia, would I be required to market my product through the commission?

Mr. Leroux: You would be required to market them through a licensed agency, which is licensed by the commission.

Mr. Epp: I could not just sell to someone who comes onto my farm to purchase some carrots, let us say.

Mr. Leroux: You could probably do small cash sales but not truckload lots. Many people do cash sales.

Mr. Epp: Presumably, that licensed agency collects the fees.

Mr. Leroux: As we have indicated, the licensed agency sells the product and, from the gross proceeds, deducts the levies and submits them to the commission on behalf of each producer.

Mr. Epp: They deduct the levies from the amount they pay to the producer. The levies come out of the producer's pocket.

Mr. Leroux: Yes.

Mr. Epp: How is the amount determined? Is it calculated by tonnage of production or by acre or by dollar value?

Mr. Leroux: With storage crops, it is by weight; with processing crops, it is by weight; and with greenhouse crops, it is by production area under glass.

Mr. Epp: Who monitors or enforces it?

Mr. Leroux: The commission.

Mr. Epp: Does someone go to a registered agency once in awhile to ensure that everything coming in is paid?

Mr. Leroux: We review and audit the books of each agency each year. If there is a specific complaint, we will pursue it.

Mr. Epp: I have a question with respect to your answers to the list of questions contained in the December 18 letter. You went voluntarily through the whole list and gave all the answers.

Mr. Leroux: I believe that is what I was asked to do.

Mr. Epp: I was curious about your answer to question 7: "Has the Commission ever made an order pursuant to the British Columbia Vegetable Order?" Your answer was that you presumed so. What is your evidence for that presumption?

Mr. Leroux: I have no evidence for it. I am saying that based on the ongoing discussions, the briefs we have before us and what I have heard, there must have been some order that related to it. Did we make it pursuant? The answer would be no. We did not do it on the basis of any particular authority or understanding. With respect, it was the presumption that it was probably made and it probably related to it. That is the whole discussion we have been having since 1981 — or since 2005 or 2006. Maybe it was a vague answer, and I apologize for that.

Mr. Epp: I wanted to know whether you had gone to work to see whether there was an order somewhere.

Mr. Leroux: No, I have not.

Mr. Epp: You are still collecting dues on any production.

Mr. Leroux: That is correct. As I responded to one of the questions, it is in the normal course.

Mr. Epp: Do you feel uneasy that it might be illegal?

Mr. Leroux: With respect, we do not see it as being illegal. We see it as being a potential vulnerability but not illegal.

Mr. Epp: Okay.

Mr. Leroux: If I could respond, I am not a lawyer. If I get kicked here, you will understand that I said something I was not supposed to say.

A long round of litigation in British Columbia started around 2002 and was finally resolved in 2006, whereby the question of the commission's ability to issue levy orders was raised. The matter went before the Supreme Court of British Columbia and the commission's authority was upheld. That cost producers a tremendous amount of money for legal expenses; and in the end, we were upheld. We would like to avoid that sort of legal expense. It does not add any value to producers. Quite frankly, the producers are not having the best time right now with the currency exchange and other associated costs. You hear of great things in the grain industry, but the vegetable industry is not so much fun. They do not need these legal costs.

To the extent there is a vulnerability, we would like to get rid of it.

Mr. Epp: Recognizing and thanking you for the fact that we have already been here for an hour, and understanding that it is 6:30 in British Columbia, perhaps you are not as bright as you would be if we were meeting later.

Mr. Leroux: No, this is just fine, thank you.

Mr. Epp: Would you say that the reason you are here at this ungodly hour — B.C. time — is primarily the fault of the department here in Ottawa?

Mr. Leroux: I do not want to lay blame. I think that would not be very constructive. As has been explained here, there have been a number of processes going on. We have done what we can.

Could we do more? You can always do more. I am prepared to accept that and to direct our legal counsel to do whatever we can to resolve this issue. However, I do not want to start laying blame.

Mr. Epp: Let me put it another way. Is it your opinion that the best way of resolving this issue is right here in Ottawa, between the department and Parliament?

Mr. Leroux: Since it is a federal act, order, regulation, it would seem to me that the gatekeeper exists here in Ottawa. We can do what we can to provide information — we can draft things, et cetera. In my view, put them all in a room and do not let them out until it is solved.

Mr. Epp: That is a plan I have proposed occasionally myself.

Senator Moore: Mr. Janelle, you mentioned that your predecessor toured Canada and explained this situation to the boards in all the provinces, except Quebec, and that you did Quebec after you took office. Are any other provinces facing the same situation as British

Columbia?

[*Translation*]

Mr. Janelle: Thank you for your question. I cannot answer it.

[*English*]

Senator Moore: You cannot answer it? Do you not know?

[*Translation*]

Mr. Janelle: I do not know.

[*English*]

Senator Moore: He says he does not know. Who would know?

Mr. Martin, do you have the answer to that question?

Mr. Martin: No, I do not.

Senator Moore: Who communicates with all the provinces to ensure they are adhering to the law of the land?

[*Translation*]

Mr. Janelle: Let me explain our role again. We assist provincial commissions by steering their orders or the regulations that stem from those orders through the federal regulatory process. We do not follow up, or monitor, you could say, to see if they are meeting the requirements or not. That is why I cannot answer your question.

This matter is somewhat related to one that you recently studied about Saskatchewan Pulse where we were told that incorrect information had been passed on. No follow-up was done. It was under a delegation done through federal and provincial jurisdictions. We give the boards the responsibility to do the work, just as Mr. Martin explained earlier. That is why we have no idea who. . . .

[*English*]

Senator Moore: Do you wait until a provincial board comes to you with a problem and then you assess whether or not they are meeting the law? It sounds like you are not initiating. Do you wait until the provincial board comes to you to address the situation?

[*Translation*]

Mr. Janelle: That is right.

[*English*]

Senator Moore: Therefore, you do not know if any of the other provinces are operating outside of the law as we see it. Also, you do not ask. That is extraordinary. Who does?

Mr. Martin: As we have explained, the approach is to explain to the provincial boards what is required. Particularly, the council helps them through the steps of the federal regulatory process as they go to make orders.

I may have misunderstood your question, but I think it was whether we are aware of other boards that have a potential vulnerability like that of B.C. We have not done an analysis of all the orders of all the boards to see whether any of them have a potential vulnerability like B.C. has identified.

Senator Moore: Someone else may want to pursue that line of questioning. I do not know what else to ask.

I have another issue I want to address. We have heard a reasonable approach to resolving this situation in terms of the efforts of the B.C. witnesses and the letter from Mr. Collins.

Mr. Martin, in your answer to Mr. Wappel, I felt some reluctance. Will you pursue this with some enthusiasm? I did not feel any kind of energy with respect to this issue having some urgency — “We have some suggested solutions and I am going to get this done.” Where is that energy? Do you have any reluctance to pursue what has been suggested?

Mr. Martin: I would like to think that what I do, I do with enthusiasm. I undertook to make sure that the potential vulnerability and the solutions that have been put forward are brought to the attention of the system. I am not in a position, and I should not be, of saying whether the government will or will not choose to do legislation.

Senator Moore: I am not asking that. I just want to know that you will advocate, on behalf of the evidence and the suggestions that have been presented today, to bring this matter to a timely and reasonable solution. When you write to your boss, do you advise him? The boss can get the transcript from the meeting. You are a lawyer. Do you not go through it and say, “I suggest we do this; all sides seem to agree, so let us get it done”; or do you just say, “This was what was presented,” and give him the transcript of the meeting? That is not very useful; he will have to go through it all again. Are you not there to advise him?

Mr. Martin: As I said, I think the ideas that have been put on the table for a solution to the potential vulnerability that B.C. has identified need to be examined and analyzed. We will certainly do that. I cannot say I will do more than that.

Senator Moore: You have not accepted that these are reasonable solutions. You want to look at it and analyze it further. How long will that take?

Mr. Martin: I do not know the answer to that.

Senator Moore: That is extraordinary.

The Joint Chair (Mr. Lee): We thought we were making progress, but perhaps we are not. I want to direct my remarks and questions to Mr. Hrabinsky and Mr. Leroux.

It is clear that a problem has been identified and that you recognize it. I do not agree that there is a statutory amendment fix out there, unless it is years down the road. The problem as the committee sees it is that your organization is not complying with federal legislation.

I will try to say this succinctly: This is a problem that you ought to flag for the reasons alluded to by Mr. Leroux. I am speaking to Mr. Hrabinsky. It has to be dealt with and it has to be fixed. I do not quite understand why it is not possible for you to comply with the existing legislation by putting in place a proper levy order, one that is registered and published properly. It seems to me that is the simple fix.

There may be other marketing boards across the country and other problems in existence. However, I do not understand why your organization cannot do that. You or someone is bucking that. Can you tell me why you cannot proceed immediately to put in place a properly registered, published levies order under federal legislation?

Mr. Hrabinsky: We have discussed that, obviously. We can and it is our intention to do so. That begs the question: Why has that not been done —

The Joint Chair (Mr. Lee): I am prepared to treat everything else as secondary if you will please fix the problem of the allegedly illegal infrastructure that is there now. If you do not fix it, one of your very proud producers in British Columbia will take you up on some of this. That person or organization may have deep pockets. You only have \$625,000 a year to play with. You want to fix it. Have I made that point?

Mr. Hrabinsky: Absolutely.

The Joint Chair (Mr. Lee): If you change the amount of the levy, how long would it take you to put that in place? Would it take a couple of weeks?

Mr. Hrabinsky: For us to submit an order for registration and publication will not take a great deal of time.

The Joint Chair (Mr. Lee): No, I am talking about the levy. If you want to change the levy next week, how long will it take you to get that in place?

Mr. Hrabinsky: We would send something in immediately. If your question is how long it would take until it is registered —

The Joint Chair (Mr. Lee): You have not been registering properly. That is the problem. Can you now indicate to the committee that you are prepared to embark on that task and complete it? Will you indicate to the committee you will do that forthwith?

Mr. Hrabinsky: Yes, absolutely.

The Joint Chair (Mr. Lee): I will not ask you why you did not do it a month ago or 15 years ago. There are other legal issues.

Mr. Leroux, do you want to say something?

Mr. Leroux: Yes. As chair of the commission, I can assure the committee that, based on your comments, that we will direct counsel to put in place a levy order, with numbers, by the beginning of next week. This does not seem to be a complex issue. We can get it to Ottawa. What happens when it gets to Ottawa is beyond our imagination or comprehension. However, we will get it to Ottawa.

The Joint Chair (Mr. Lee): Around this table, we are real good in Ottawa. We will try to help you out there.

I want to make another comment. Everyone seems to think that Mr. Collins' letter has some kind of fix in it. Whenever someone suggests a statutory amendment as a fix, for us, that is way down the road. The comments were constructive and helpful and I appreciate Mr. Collins' attempt to frame the thing with a focus on mitigation. There is a huge mitigation focus in his letter and I appreciate his efforts to frame it that way.

Mr. Collins also suggested something else that I want to deal with.

Mr. Hrabinsky, you have mentioned that you may subscribe to the possibility that your agency might be exempted from these requirements because it is a quasi-judicial agency. I want to tell you right off the bat that neither I nor counsel here buys that argument. It is over-reaching. I appreciate the effort in mitigation, but I am suggesting to you that it will not fly. Do you want comment?

Mr. Hrabinsky: Yes, I do. I want to make it plain that I am not offering that argument up to this committee to suggest that we ought to be inactive on this point. I am merely indicating that in the event there were to be a court challenge, we would regard that as a viable argument. However, we have indicated that we will move forthwith to present the levy order for publication.

The Joint Chair (Mr. Lee): That is great.

I have another comment. It is amusing and some around the table may recall this. Approximately 20 years ago, Mr. Justice Marceau made *obiter* remarks in litigation surrounding the Kemano exemption order, which has always been a benchmark in this committee. We did not like the remark. We believed it was wrong. In a funny kind of way he has been *persona non grata* around this table for a couple of decades.

Mr. Collins had the misfortune to quote Mr. Justice Marceau, in another way dealing with the issue of exemption. As a committee, we have been fighting the pretended power of exemption for ages. I just wanted to say that.

I will stop there. I think we have made some progress.

The Joint Chair (Senator Eyton): Does anyone else wish to ask a question?

[*Translation*]

Senator Nolin: Mr. Janelle, I am going to come back to you. I am stunned by your answers. Can you explain the mandate of your organization to me?

Mr. Janelle: We have two mandates. The first is to oversee the national agencies that deal with supply management. So, for poultry, they are four in number: eggs, turkeys, chicken and hatching eggs. Our second mandate is, on behalf of the Department of Agriculture and Agri-Food, to administer the act that provides delegation orders to provincial marketing boards.

Senator Nolin: What does administration, the second part of your mandate, entail?

Mr. Janelle: As we have tried to explain from the outset, we assist provincial boards to obtain delegation orders and the resulting regulations. When we receive a request, we work with Justice Canada and the department to move the requests through federal administration. For a

delegation of powers, all the documents need to be prepared for submission to cabinet where the decision is made. This is quite a long process; it can often take up to a year depending on whether or not there are any snags.

When the regulations result from a delegation, as is the case with the regulations on the levies, the process is shorter and it can take two to four months, sometimes a little more, for various reasons, to hold the discussions with the department and with Justice Canada. We often do that in cooperation with the organization asking for the regulations.

Senator Nolin: About how many of these pieces of paper are there, delegating powers to provinces?

Mr. Janelle: In total, there are 82.

Senator Nolin: Among how many provinces?

Mr. Janelle: Nine provinces.

Senator Nolin: So one province has none?

Mr. Janelle: Only Newfoundland has none.

Senator Nolin: That was what my colleague Senator Moore asked. There is one province with which you have no working relationship.

Of the nine other provinces, is British Columbia the only one that you have not been able to nail down?

Mr. Janelle: I have to go back to what I said earlier. We know that we have a problem in British Columbia but I cannot tell you if similar problems exist with other provinces because we do not follow up with them, or monitor them, because we work in a policy framework imposed by the department. We do not want to cause problems or to interfere with another level of government.

Senator Nolin: The fine line is important in British Columbia's case. You mentioned that there are 82 agreements or delegations.

Mr. Janelle: Delegations.

Senator Nolin: Delegations means that the instruments have been passed. In this case, they have not. This would be the 83rd.

Mr. Janelle: No. When I say that there are 82 delegations, they are delegations of powers, the first order, that is. The levies we are discussing are in regulations that come from those delegations.

Senator Nolin: How many instruments in all? There are 82 main ones and a number of others that come from them?

Mr. Janelle: Correct. I am not able to give you the number of regulations that come from the 82 delegations. I do not have those figures.

[English]

Mr. Wappel: Mr. Hrabinsky, I agree with your brief that states the commission is of the view that strong counter-arguments could be advanced. That is all they are — strong counter-arguments. You are a lawyer and, therefore, know perfectly well that no one can predict what a judge will decide. As Mr. Leroux said, the last thing you want to do is become involved in lengthy and expensive litigation. The easy way out for you is to just do it.

However, I am troubled by the role of the National Farm Products Council because, as I heard Mr. Janelle explain, it is his role to help these commissions obtain the delegated federal authority. He also said after that, there is absolutely no monitoring by his organization as to whether or not those commissions are exercising the delegated authority in accordance with the federal statute.

I want to know who is watching over the interests of the delegator, the federal government? Who looks after the delegator? I am almost speechless that it would be, ``Okay, we helped to get your delegation from the federal government, so go to it." I find it incredible, Mr. Janelle. Do you not find it incredible?

[*Translation*]

Mr. Janelle: Thank you for your question. When I arrived at the council, I found it a little surprising, yes. The problem here, however, is that this delegation is made through various levels of government. We do more than just shuffle paper through the regulatory system. We take the time to meet the boards to tell them about the requirements that they have to meet and about the need for them to conform to the legislation.

However, it is true that we go no further than that because we operate inside a policy framework. We do not move outside it.

[*English*]

Mr. Wappel: However, Mr. Janelle, if they need help getting the delegated authority, surely then they need help exercising the delegated authority because they do not know all the nuances of federal statutes. Why should they know because the commissions are provincial. I do not understand why that is not part of the mandate.

[*Translation*]

Mr. Janelle: We take the time to explain the legislation to the people, what the requirements are, as well as their responsibilities. We help them as best we can. What we do not do is follow up.

[*English*]

Mr. Wappel: I know that. My question is: Should you change your mandate? Do you have an answer?

[*Translation*]

Mr. Janelle: I cannot answer your question. But I can ask my colleague for his opinion.

[*English*]

Mr. Martin: It would be a foolish official that shows up here to suggest changing the official's mandate. In these situations, we are talking about a provincial board operating under provincial jurisdiction. The policy question is about how one deals with the constitutional and legal structure without creating a situation in which one level of government is seeking to supervise another level. The solution that we have reached is to educate the provincial boards on the requirements of the Statutory Instruments Act and to encourage them to follow those steps.

As has been discussed here a bit, the courts seem to feel that there is some doubt as to whether all of those steps are necessary for all of those provincial boards, and that is a factor. However, the approach of the department and the council is to encourage people to follow those steps under the Statutory Instruments Act where their delegations specify that they act by order.

Mr. Wappel: Could Mr. Janelle inform himself with respect to Senator Moore's question on other provinces being in the same situation? If he finds that other provinces are in the same situation, could he please inform this committee?

The Joint Chair (Senator Eyton): Ms. Barnes?

Ms. Barnes: I thought we were out of time, so I handed my question over to Mr. Wappel, which is fine.

I heard you say that you will take this action. I would like copies of the correspondence to this committee, and we will have to monitor the matter. At some later date, after getting the response from Mr. Janelle to Mr. Wappel's question, the committee might want to consider talking to the Minister of Agriculture and Agri-Food Canada.

The Joint Chair (Senator Eyton): Were you referring as well to the order that we understand will be made next week? We will get a copy of that from our counsel and circulate it.

Ms. Barnes: Yes, that is right. We have to end this cycle and now is the time to do so.

Mr. Norlock: I have a short question for Mr. Janelle or Mr. Martin. As an example, you take the federal legislation to an agency in British Columbia or Ontario or another provincial agency, and lay out the federal legislation and the requirements. After that, they are on their own and you do not monitor them. You let them know what is required and that is it; is that correct?

[*Translation*]

Mr. Janelle: We do a little more than just explain to them; then we help them.

[*English*]

Mr. Norlock: You help them comply with the regulations.

Mr. Janelle: To comply, yes; we help them with the paper — to pass them through the federal administration.

Mr. Norlock: You tell them what is required and help them prepare themselves to meet those requirements. What if the agency turns around and says — they do not say it directly, but you get that impression — ``Thank you very much, but we are not going to do it your way; we will

do it our way"? What do you do then? Do you report to someone that these guys are not cooperating, not doing their job and not complying with the regulation, or do you say that it is too bad they did not follow your advice?

[*Translation*]

Mr. Janelle: Usually, we prepare a report for Agriculture and Agri-Food Canada. Honestly, since I took the position, it has never happened. I cannot tell you exactly what we do.

We strongly encourage them to answer and when we become aware that there is a problem, we prepare a report about it. But that has not happened since I have been in office.

[*English*]

Mr. Norlock: Who do you report to when you find out someone is not following the regulations?

[*Translation*]

Mr. Janelle: I report directly to the policy directorate, to my colleague with me here.

[*English*]

Mr. Norlock: To your knowledge or Mr. Martin's knowledge, since 1991 has it ever occurred that you have reported — even though you do not ask — that you believe someone is not following the regulations?

Mr. Martin: I am not aware of a case where that has happened.

[*Translation*]

Senator Bacon: I am more confused than when I got here. Is it possible to get a complete description of your role or your mandate, both yours, Mr. Janelle and yours, Mr. Martin, and have it sent to the committee?

I no longer understand what either one of you does, nor how you relate to each other. Can each of you provide your mandate and your role? That would help me understand better what you do.

Mr. Janelle: Yes, we can send that to you. I feel that we have answered the questions you asked. I can leave our mandates with the clerk, and we also have a chronology of everything that has happened in this matter. We can let you have that with pleasure.

[*English*]

The Joint Chair (Senator Eyton): I think that concludes our questions. We will turn to our counsel now to see if he has any summary remarks he would like to make.

Mr. Bernhardt: Not a great deal, Mr. Chair. As we have heard, it looks like the committee's immediate problem will be resolved with the enactment of a levies order, registered and published. We have also heard that consideration will be given to a solution to resolve any issues in connection with past levies that have been imposed.

One thing I should note for the record is the amendment to delete the words "by order" from the enabling order. I would remind committee members that this relates to the definition of "statutory instrument" under the Statutory Instruments Act. Historically, the committee has taken a different interpretation of that definition than has the Department of Justice Canada, which may cause issues that will have to be dealt with down the road.

The Joint Chair (Senator Eyton): I wish to thank our witnesses for appearing here today and for their testimony. It is very much appreciated and is most useful. We have identified at least some partial solutions. Of course, we are looking for a 100 per cent solution overall.

I particularly want to thank the witnesses who have come from British Columbia. We recognize that a special effort has been made, and it is doubly appreciated by this committee. You are now excused.

Mr. Leroux: Let us not take 19 more months. Thank you.

The committee adjourned.

