

## Exchange Between Gar Knutson and Charles Caccia

November 4, 1997

The Vice-Chairman (Mr. Gar Knutson): ...many times in the future. Mr. Caccia, would you like to ask a question in the first round. Everyone else has gone on the first round.

Hon. Charles Caccia (Davenport, Lib.): All right, then. Thank you. Let me first ask a question of Mr. Gershberg based on his statement on page four today of his paper under the heading "Whether Harmonization Will Require Amendments to the CEAA". In the fourth paragraph, reference is made to the fact that the federal position is that no amendments to CEAA are required. That is a position. Position means.... What does it mean? Policy?

Mr. Sid Gershberg: As I stated earlier on or somewhere in my remarks, the agreement was negotiated from day one on the basis that it would be done within the existing framework of the act. It was done with that in mind. The provinces know that. I was under direction from my minister to do that and our analysis of the.... In doing it-working with lawyers, etc.-we're convinced that there's absolutely no requirement and no intention. I know that a number of witnesses....

Hon. Charles Caccia: Let me stop you right there. So today you feel that there is no need for amendments.

Mr. Sid Gershberg: Absolutely not.

Hon. Charles Caccia: This is the position of the federal government.

Mr. Sid Gershberg: Yes.

Hon. Charles Caccia: Suppose that a few years from now, however, it will become evident that an amendment is necessary. That position, therefore, could change. Isn't that so?

Mr. Sid Gershberg: I guess I would argue that one could also have the option of changing the agreement, but I think that really is a hypothetical question.

Hon. Charles Caccia: What would be the easier of the two, changing the agreement or changing the act?

Mr. Sid Gershberg: I suspect changing the act would be difficult.

Hon. Charles Caccia: You think so. The act is coming up for mandatory review in a few years. Is that the case.

Mr. Sid Gershberg: That's the case.

Hon. Charles Caccia: And should you, between now and the review of the act, conclude that there are such

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in the act.

Mr. Sid Gershberg: I suspect changing the act would be difficult.

Hon. Charles Caccia: Do you think so? But the act is coming up for a mandatory review in a few years. Isn't that the case?

Mr. Sid Gershberg: That is the case.

Hon. Charles Caccia: Should you, between now and the review of the act,

conclude that there are such deficiencies elsewhere at other levels that the CEAA ought to be strengthened, would you not proceed?

Mr. Sid Gershberg: That's a different issue.

Hon. Charles Caccia: No, it is this issue.

Mr. Sid Gershberg: Okay, well, I-

Hon. Charles Caccia: No, no, I'm addressing whether or not amendments will be required.

Mr. Sid Gershberg: What I am stating quite categorically is that there are no amendments required because of this sub-agreement.

Hon. Charles Caccia: Today.

Mr. Sid Gershberg: Well, today or-

Hon. Charles Caccia: No, today, because you don't know what the future involves.

Mr. Sid Gershberg: But the five year-

Hon. Charles Caccia: You're mortgaging the future.

Mr. Sid Gershberg: No, I'm not mortgaging the future. What I'm saying, sir, is that-

Hon. Charles Caccia: So you're definitely firm on the fact that there will not be any changes on CEAA in future that could flow from the accord.

Mr. Sid Gershberg: No, I'm not saying that. From the accord-what I'm saying is that yes, there is going to be a five year-

Hon. Charles Caccia: Are you definitely on record on that?

Mr. Sid Gershberg: Yes, I think I'm quite-

Hon. Charles Caccia: You're taking a very perilous route here, Mr. Gershberg. I'm alerting you-

Mr. Sid Gershberg: No, no, but-

The Chairman: -because there may be a situation in which you may want it.

The Vice-Chairman (Mr. Gar Knutson): Can I make a suggestion?

Mr. Sid Gershberg: I agree. What I'm saying, sir, is that you're absolutely right, there is a five year review coming up. That five year review will be a broad review and will obviously deal with a whole host of matters raised by, I'm sure, the environmental groups industry, yourselves and others on either deficiencies or gaps or other issues quite unrelated to the sub-agreement and government, at some point in the future, two or three years from now, may decide that they want changes to the act for whatever reason. What I'm saying here today, and I've said it, I think quite categorically, is that we do not believe that there are any requirements to change CEAA as a result of this sub-agreement.

The Vice-Chairman (Mr. Gar Knutson): Is it the same to say that any interpretation of this agreement that would infer a requirement for a change in CEAA is wrong?

Mr. Sid Gershberg: That's right.

The Vice-Chairman (Mr. Gar Knutson): So anyone who says these words imply or show a need to change CEAA, then-

Mr. Sid Gershberg: I think I'm correct in saying what people have said is there's a line in there that says there could be changes as necessary. We

have stated quite categorically we do not believe it's necessary and no one, I don't think, has come up with specific areas where we would have to change it-and this is understood by the provinces. This is not new. We've been saying this quite clearly for many, many months.

Hon. Charles Caccia: Oh, yes, there's no doubt about that. The fact is that witnesses-and well informed witnesses-have told us the contrary-

Mr. Sid Gershberg: I understand that.

Hon. Charles Caccia: -and therefore we want to make sure that this statement here is one that takes into account also the possibility of future changes as some other sources have indicated to this committee. To me, it seems to be reasonable to assume there might be need for amendments in future.

Mr. Sid Gershberg: For other reasons. As we stated, in terms of the five year review and a general review-

Hon. Charles Caccia: No, but you may also discover that certain provincial assessment acts are inadequate under the sub-agreement and something needs to be done in order to bring them to an acceptable standard.

Mr. Sid Gershberg: But that might require changes to provincial acts.

Hon. Charles Caccia: Well, yes. Excuse me, if you decide that the responsibility is provincial, yes and if the province will not do it, will you wait for one year?

Mr. Sid Gershberg: I guess what we're saying here is that in terms of the requirement, in order to meet our commitments for this sub-agreement, there is no necessity to amend CEAA. I don't know how else I can state it.

Hon. Charles Caccia: Oh, it is very clear. But there may be situations in which this amendment may be necessary, at least in view of the fact that we are entering a totally new territory and you may not be satisfied by the quality of the provincial legislation and if the provincial level will not agree to strengthen its legislation to the level that CEAA envisages or wishes to have in order to be a mirror legislation to the CEAA legislation, then what will you do?

Mr. Sid Gershberg: We might not have a bilateral agreement. Remember, this has to be implemented through bilateral

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legislation, then what will you do?

Mr. Sid Gershberg: We might not have a bilateral agreement. Remember this has to be implemented through bilaterals. If we cannot come to a suitable arrangement with a particular province, and we think we can, but if there should be a situation where we cannot, we will not sign a bilateral agreement. We will not implement the sub-agreement in that particular case.

Hon. Charles Caccia: So you are certain that you will examine the provincial legislation should that be the one to be applied and you are sure of yourselves that it will be adequate before you sign? Is that what you are saying?

Mr. Gershberg: Yes. The two governments will have to be able to accommodate

the sub-agreement and we are confident that we can do that. I think I pointed out a number of areas within our own legislation now that encourages that. Remember, even if the the provincial legislation is at a lower standard, and I think this is really important, in terms of the sub-agreement, even if it is at a lower standard, we are using this additive approach so that if the provincial standard is lower than ours, for example, if they do not do accumulative effects or do not have participant funding, it will become part of that joint agreement because the CEAA standards will apply.

Hon. Charles Caccia: Then why not apply CEAA in the first place, rather than applying the provincial legislation? Why go through this long and difficult route and say "in this particular agreement, CEAA legislation, by comparison, is a better one than the provincial, and it shall apply"? Why defer to the provincial legislation? That is exactly why I wanted you to be...

Mr. Sid Gershberg: Well, we are not deferring. We are using...we both have legislative requirements. This agreement will apply in cases where both the federal government and the provincial government has legislative requirements, and we are not changing those legislative requirements or authorities. That is very important to understand. So we come to this agreement together with two sets of requirements, and a proponent, ## Bay or Cheviot ## is faced with potentially two environmental assessments, and presumably nobody wants that. We do not want it. The provinces do not want it. The proponents do not want it. So we are saying we both have legislative requirements. This is not a constitutional agreement, we are not changing those. We are going to come to the table together and develop an effective joint process which meets their legislative requirements, meets our legislative requirements and have one assessment that will meet the requirements of both acts, the particular provincial act and CEAA.

Hon. Charles Caccia: At the present time how many provincial legislations meet your requirements? Can you name the provinces that meet CEAA requirements?

Mr. Sid Gershberg: They are a little different.

Hon. Charles Caccia: We know that.

Mr. Sid Gershberg: They are all a little different.

Hon. Charles Caccia: Thank you we know that. Can you tell us which ones meet federal requirements?

Mr. Sid Gershberg: They do not have to meet federal requirements.

Hon. Charles Caccia: But you just said that you want to satisfy that they meet federal requirements.

Mr. Sid Gershberg: What I am saying that if we cannot come to an agreement, a bilateral agreement on the process that we are going to use-basically, these are administrative process agreements. We are applying the CEAA standards in every single assessment that will be done under this accord. I think that has to be understood. We are not stepping out. This will be a joint process where the terms of reference, the requirements for analysis,

the participant funding...

Hon. Charles Caccia: Great. This is beautiful what you are saying. It sounds like music. So which legislation will have primacy when it comes to assessment?

Mr. Sid Gershberg: Neither will have primacy. They will both apply. There will be a lead. If you have an opportunity to look through the B.C. bilateral, the province takes the lead in administrative terms. There is a project committee where the federal government sits on it, the provincial government sits on it and others.

Hon. Charles Caccia: But surely you will want to use one piece of legislation in order to operate in a clear and orderly fashion, not two at the same time?

Mr. Sid Gershberg: The accord and the sub-agreement does not alter legislative authorities. It is very clear on that so that two legislations will apply.

Hon. Charles Caccia: Alright. So, two legislations will apply at the same time. The stronger and the weaker one because in each case there will be one that will be stronger than the other. Very rarely they mirror each other. Correct?

Mr. Sid Gershberg: That is right. There will be some cases when the provincial legislation will be broader than our own.

Hon. Charles Caccia: In doing so we actually want to simplify the system and make

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there will be one that will be stronger than the other, very rarely they mirror each other. Is that correct?

Mr. Sid Gershberg: That's right. There will be some cases when the provincial legislation will be broader than our own.

Hon. Charles Caccia: So, in doing so, we want actually to simplify the system and make it faster. Now you explain that to me, the logic of it. We are applying ## to legislation in the name of efficacy.

Mr. Sid Gershberg: The alternative to not applying the two to a joint process, I'll come back to Cheviat ## or Voisey's Bay, both legislations apply in both those cases, but what we're trying to do is avoid two separate environmental assessments. We're saying can we come together, work together as partners, using the requirements of both our legislation to go through the process of environmental assessment and then advise governments.

Hon. Charles Caccia: Thank you, Mr. Chairman. I have another question on the second round for Mr. Allard.