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Mr. Alan Tonks

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•(0905)

[English]

The Chair (Mr. Alan Tonks (York South—Weston, Lib.): Good morning, members of the committee. Bonjour, ladies and gentlemen. To our witnesses today, good morning and welcome to the Hill, and welcome to this committee on environment and sustainable development.

Just so you are aware, we are on Bill C-15, so you are in the right room—and we are. That's the act to amend the Migratory Birds Convention Act, 1994, and the Canadian Environmental Protection Act, 1999.

As the order paper indicates, we have, from the Shipping Federation of Canada, Michael Broad, president, and Anne Legars, director, policy and government affairs. From the Canadian Maritime Law Association we have Peter Cullen, president, and John O'Connor, chair, marine pollution subcommittee.

The Honourable Tom Osborne is here. We are very pleased you are able to appear before the committee this morning. I know it was a last minute kind of thing, but we do appreciate you being here. We're looking forward to your insights, along with the other witnesses.

I understand an order of speaking has been agreed upon by our witnesses. Mr. Minister, the others have indicated you will go first. We'll then go to the Shipping Federation of Canada, and then the Canadian Maritime Law Association.

Mr. Minister, welcome. The floor is yours.

Hon. Tom Osborne (Minister of Environment and Conservation, Government of Newfoundland and Labrador, Government of Newfoundland and Labrador): Thank you very much. I guess there are always benefits and drawbacks to being the first on the list.

Mr. Chairman and standing committee members, I certainly appreciate the opportunity to present to you today. This issue is a very significant one for all coastal provinces, but in particular Atlantic Canada. I'm going to try to give you some insight into why it's so important for Newfoundland and Labrador.

Our province has been making our thoughts known to a number of environment ministers throughout the years about the importance of this particular issue. The key elements of Bill C-15 are extended jurisdiction, enhanced enforcement capability, and increased fines for perpetrators.

Bilge pollution is a reality all year round. During the winter months, because of the severe weather and ocean conditions, vessels tend to stay closer to shore. We're seeing literally thousands of dead

seabirds wash ashore on our coastlines every year. It's estimated that only about 5% of the birds are ever accounted for. We know that approximately 300,000 seabirds, on an annual basis, are killed as a direct result of bilge oil pollution off our coast. We know the same numbers are the reality off the Pacific coast as well.

If you look at the *Exxon Valdez*, there were approximately 300,000 seabirds killed as a result of that disaster. We're dealing with the *Exxon Valdez* off the coast of Newfoundland and Labrador on an annual basis, so it's a real issue for us.

What I would classify as rogue vessels are pumping their bilges with very little or no regard for our coastal environment in Canadian waters. They're polluting our waters, killing our wildlife, and having an effect on the local economy through fishing, tourism, and so on. Every year, indeed as we speak, there are seabirds washing ashore on the south coast of Newfoundland. This past weekend there were over 300 seabirds witnessed washing ashore in the Placentia area of Newfoundland and Labrador. That was as a result of a mystery spill.

The Cape Saint Mary's Bird Sanctuary is well known on a national and global basis. Thousands of people visit our province every year just to witness one of the last sanctuaries of this magnitude that exists in the world. It's truly a very special place. The sanctuary is directly in the path of oil that comes ashore as a result of spills because of shipping lanes. We cannot sit idly by and continue to witness this happening. It is our duty, as elected representatives, to be proactive. This bill, I believe, is a very strong and positive move in the right direction to deal with this issue.

I'm aware that over the past several years the federal government has paid some attention to this issue. There are new detection measures put in place to try to detect vessels, but the reality is that most of these activities have met with limited success. Part of the reason for that is the difference between what we have in enforcement penalties and conviction rates in Canadian waters and what they have in American waters.

The federal government needs to have access to the full weight of the law to make these efforts more successful. The proposed \$1 million fine in Bill C-15 is similar to that in the States. In fact, about three or four years ago, a cruise line that operates out of Florida had \$20 million levied against them as a fine for 18 occurrences of marine pollution.

•(0910)

It is understood that one of the problems the government has faced in enforcing former acts is the inability of the courts to levy fines of this magnitude. I'm pleased to see that in this bill the fines proposed are \$1 million.

We're finding that Canadian waters are seen as a safe dumping ground for these vessels. The surveillance is not as strong as it is in American waters. The enforcement capabilities of our enforcement officers are not as strong as they are in American waters. The fines that are levied are not as high as they are in American waters. So these vessels that pollute in our waters know that the enforcement is not there. The chances of getting caught are very slim. If they are caught, the enforcement officers are limited in what they can do. That is all addressed in this bill. As a province, we're very pleased with the content of the bill.

Once this bill is passed—and I encourage the speedy passage of this bill—I believe we will have a role together, as provincial governments and the federal government, to bring awareness to the judicial level that heavy fines are needed.

On the ships that navigate our waters, there are two types. There are ships that come from ports throughout the world that are making their way to Canadian ports. Really, it is discouraging that they continue to pollute our waters. It's not all of them. Most of the ships abide by the rules, but there's a great number of ships that don't.

It's discouraging to see ships that utilize our ports polluting our waters, but what is even more discouraging is to see vessels polluting that never stop in Canadian ports. They come from ports throughout the world and navigate through our waters on their way to the eastern seaboard without contributing anything to our economy. They have no regard at all for the people who depend on our coastal waters to make a living, for our coastal environment, and for the precious wildlife in our waters. This bill I believe will address most of our concerns.

With the enactment of legislation also comes a responsibility to effectively enforce it. I urge the federal government to keep in mind as well that once this bill comes into force we will need enforcement. I see a number of ways this can possibly be undertaken. The Fisheries patrol can also act as surveillance. We're going to need measures and cooperation with the United States on protection of our coastline. We can use protection and those measures to effectively enforce and have surveillance, but we need additional surveillance as well. If these ships realize they can still pollute without any fear of getting caught, they will continue to pollute. The heavy fines are one way of deterring them.

I'd like to thank the committee for the opportunity, especially on short notice, to be able to make a presentation here today. If you have any questions, I'd certainly be pleased to entertain them.

The Chair: Thank you very much, Mr. Osborne. Mr. Minister, we are also pleased to have your deputy minister, Mr. Paul Dean, here with you. Welcome, Mr. Dean.

The committee's usual disposition is to hear all of the witnesses and then come back. Is that okay?

We'll now go to Mr. Michael Broad, president of the Shipping Federation.

Mr. Michael Broad (President, Shipping Federation of Canada): Thanks, Mr. Chairman.

Anne Legars, our director of government relations, will make the presentation.

Ms. Anne Legars (Director, Policy and Government Affairs, Shipping Federation of Canada): Thank you.

As my presentation will be half in French and half in English, I suggest you put your headphones on. I will start in French.

[*Translation*]

For more than a century now, our federation has been representing the ships which have been transporting Canada's international trade goods to and from ports lying to the east of the Rockies. Our membership comprises the owners, operators and agents of vessels which include carriers, oil tankers, container ships, dedicated ships and international cruise ships. In total, vessels represented by members of the federation account for more than 90% of international seaborne trade east of the Rockies.

West of the Rockies, the international seaborne shipping industry is represented by the Chamber of Shipping of British Columbia.

The international seaborne shipping industry has existed since time immemorial and has always been at the forefront of development of private and public international law. Indeed, given that vessels voyage constantly from one country to another, the well-being of international trade requires that the rules governing international trade transport be as clear, predictable and coherent as possible.

More than 90% of the volume of goods traded internationally is transported by means of international seaborne shipping. This is why international seaborne shipping is today subject to a full spectrum of international conventions and rules governing vessels and their technical make-up, as well as onboard equipment, operations management, crews, registers and certificates which they must have in their possession, and reports which have to be supplied upon arrival in a new country.

However, putting maritime transport at the forefront of international law, and more particularly at the forefront of international environmental law, are its implementation mechanisms. In order to ensure both compliance with international standards and a simultaneous flow of goods, coastal states have the right and the responsibility to inspect ships which stop over in their ports and detain them if they do not comply with international standards.

The results of these inspections are entered into an international database to which the authorities have access in order to be able to focus their inspections. That being said, coastal states cannot detain or divert ships other than in very specific and serious cases. In the event of a problem with a vessel in transit, the approach stipulated by the conventions is to ask the authorities of the next port of call to investigate and to cooperate with the authorities of the country which has detected the problem. This implementation system is called Port State Control in the international legal jargon.

The press release from the Vancouver conference which I sent to the committee clerk explains this Port State Control system.

Given that international seaborne shipping is extremely dependent on a coherent international legal framework, one of our federation's key roles is to study the implementation in Canada of international maritime conventions to which Canada is signatory. The federation plays the role of a watchdog and, for six months now, ladies and gentlemen of the committee, this watchdog has been barking to let members of Parliament and government know that Bill C-34, which has since become Bill C-15, does not square with Canada's international responsibilities.

In six months, you are the first to be prepared to lend an ear to this watchdog. We are grateful to you for that.

As is stated in the outline of our testimony, we wish to share our concerns with you, suggest means of dealing with these concerns and, above all, focus on the need to strengthen marine environment protection beyond Bill C-15.

● (0915)

[*English*]

As for the concerns we have with Bill C-15, we have two levels of concern, both national and international. At the national level we are very concerned with Bill C-15's duplication of the Canada Shipping Act, which is the leading Canadian legislation dealing with ship-source pollution and which incorporates the relevant international conventions and standards.

The greater the number of departments and agencies that have to be involved in a case, the greater the likelihood that problems with coordination and enforcement will result. We do not believe this expansion of jurisdiction over ship-source pollution in the Migratory Birds Convention Act, 1994, and the Canadian Environmental Protection Act, 1999, is an efficient policy. But as long as Canada's actions remain within the framework of the international conventions it has ratified, the way Canada dispatches its responsibilities among its various departments is its sovereign choice, regardless of the efficiency of the result.

But on the international level, it's another kind of concern. At the international level, we believe that Bill C-15 contains a number of provisions that do not comply with the international conventions Canada has ratified. Our written brief underlines the following specific sections of the bill that go against specific sections of international conventions: the extension beyond Canada's international waters of provisions that do not comply with international law; the granting of voting powers; the granting of regulatory and inspection powers; the granting of deviation, arrest, and detention powers; and the granting of sanctions, all of which do not comply with international law.

As you may have noticed, as representatives of the industry, the focus of our brief is primarily on provisions that will impact ships' traffic and operations by infringing the UNCLOS and MARPOL conventions. This being said, we also endorse the CMLA's views and recommendations on more liability oriented liability issues.

We have noted that the bill contains two safeguards, one for the Migratory Birds Convention Act, 1994, where the Attorney General of Canada has to give his prior consent before certain actions can be taken; and one for the Canadian Environmental Protection Act, 1999, where the Minister of the Environment has to give his prior

consent before certain actions can be taken. However, as mentioned in our brief, we believe these safeguards are clearly insufficient, because, first, they cover only some of the sections in which the bill diverges from international law, and, second, they do not in and of themselves indicate that the Attorney General or the minister will apply international law when requested to grant prior authorization to proceed with actions allowed by the act.

What proposals do we make regarding Bill C-15? We must say in all candour that our first and foremost proposal will be to withdraw the bill altogether, as we strongly believe, first, that Bill C-15 is not necessary to protect the marine environment from ship-source pollution; second, that it duplicates the Canada Shipping Act; and third, that it contravenes a number of international conventions. However, it has become increasingly clear that this bill is a top priority in political circles, not to mention an easy sell across the whole political spectrum. After all, who could possibly be against virtue?

Given the foregoing, we have come to realize that requesting withdrawal of the bill isn't worth pursuing and that we should instead focus our energies on trying to fix what can be fixed. This is the gap between certain sections of the bill and certain sections of relevant international conventions. Our specific recommendations in this regard are contained in our brief.

As mentioned in my introductory comments, the ability to rely on a solid international legal regime is of paramount importance to the international shipping industry and the international trade it carries.

We even have a back-up or alternative proposal. We suggest that all the sections of Bill C-15 that are identified as being contrary to international law be covered by a safeguard, such as subsection 18 (3), which provides for prior approval of the Attorney General of Canada. We do not consider the Minister of the Environment as a safeguard, given his political exposure. Such a safeguard should also provide that the Attorney General of Canada will apply the relevant convention when taking his decision. In any case, game officers boarding ships for inspection should be accompanied by Transport Canada inspectors, who know the applicable conventions, relevant standards, and international certificates.

Beyond Bill C-15, there are available avenues that have to be fully utilized.

● (0920)

[*Translation*]

Let us now turn to the mechanisms which ought to be implemented in order to strengthen marine environment protection. The first mechanism ought to be the rigorous implementation of an international legal framework and a system of Port State Control. We therefore support those initiatives aiming to strengthen the implementation of an international framework and we welcome Canada's leadership role on this front, a role which Canada once again demonstrated in Vancouver last month.

International law also provides for the creation of special zones for which antipollution standards are even stricter. The Baltic, the Mediterranean and the Antarctic have thus been declared special zones under international law. In exchange, however, the coastal state has to ensure that residue-gathering facilities be available in its ports. Should Canada wish to have some of its waters designated as special zones under international law, and ensure that residue-gathering facilities be available in our ports, you would have the support of the industry.

We are also in favour of meaningful sanctions in the event of pollution occurring, particularly in the event of wilful pollution. If the difference in fines between the United States and Canada is viewed as an incentive to pollute Canada rather than the United States, increase fines here in Canada. You will have our support.

With or without Bill C-15, we also consider it to be a matter of priority that cooperation between the various departments who have responsibilities regarding pollution incidents be strengthened and made more effective. When one polluter slips through the net due to poor coordination between the different departments, it is the image of the maritime industry as a whole, including responsible operators, which is tarred.

To summarize, there is a lot which could be done and which should be done to strengthen marine environment protection. However, it requires the concerted efforts of all stakeholders, from the government to industry, and from environmental groups to unions. It requires more time and effort than rushing through a piece of imperfect legislation, but it is time and effort that will bear fruit in the long term. We are willing to do our part.

We would go as far as suggesting a five-year review of the act in order to evaluate its application, and progress made.

Ladies and gentlemen, thank you for your attention. Above all, thank you for having agreed to initiate a debate on the important issues stemming from Bill C-15.

• (0925)

[English]

The Chair: Thank you, Ms. Legars. We appreciate that input.

We'll now go to the Canadian Maritime Law Association, and Mr. Cullen and Mr. O'Connor.

Mr. Peter Cullen (President, Canadian Maritime Law Association): Thank you very much, Mr. Chairman.

Ladies and gentlemen, permit me at the outset to express the Canadian Maritime Law Association's thanks at having been invited to speak to you this morning and to stress our major concerns with respect to Bill C-15.

Before doing so, however, I have a few words about the Canadian Maritime Law Association. The association was formed in 1951 to promote the study and advancement of maritime law and its administration in Canada; this includes the development of uniformity in maritime law. Our officers and executives are all volunteers, and our individual members are members of the Canadian shipping community from across the country, from Newfoundland to British Columbia, be they businessmen, lawyers,

insurance underwriters, brokers, adjusters, or importers and exporters.

Our constituent members include a number of the groups who have submitted briefs on this bill for consideration by you, and these include, of course, the Shipping Federation of Canada, the Chamber of Shipping of British Columbia, the Canadian Shipowners Association, the Canadian Petroleum Products Institute, the Canadian Bar Association, and the Canadian Merchant Services Guild.

Together with the national maritime law associations of other countries, we participate in the study and development of international maritime law with the United Nations, through the IMO and UNCITRAL, and the Comité Maritime Internationale. This past June we hosted for the CMI a week-long conference in Vancouver on international maritime law, including pollution, with 400 participants from more than 40 other foreign national maritime law associations.

I wrote to the Minister of Environment on behalf of the association in October of this year, setting forth our concerns with the predecessor bill, Bill C-34. These concerns reflect the unanimous position of the CMLA's executive; on such legislative matters, we do not proceed simply on a majority basis. My colleague, John O'Connor, who is chair of our marine and pollution subcommittee, and to whom I shall shortly pass the microphone to speak on the substantive issues, resubmitted this letter on November 12 in the context of Bill C-15.

Bill C-15 contains a number of serious flaws that Mr. O'Connor will specifically address. But kindly remember, as you hear our arguments on such flaws, that the CMLA, like everyone in this room, does not support rogue vessels and the deliberate discharge of pollutants into our marine environment. I echo the words of the honourable member from Newfoundland on that point.

Indeed, the goal of MARPOL and other international conventions, which has been raised and which the CMLA supports, is entirely the opposite. It is to provide an effective international framework, where domestic controls can be enforced to limit such pollution incidents.

Mr. O'Connor will cover this in more detail.

Thank you.

Mr. John O'Connor (Chair, Marine Pollution Subcommittee, Canadian Maritime Law Association): Thank you, Mr. Chairman.

[Translation]

I would also like to thank all the members of the committee for having given us this opportunity to express our position on this bill.

• (0930)

[English]

As I listened this morning to the honourable minister from Newfoundland and Labrador, Mr. Osborne, I noted four points. I think he has very succinctly underlined the four points that are the pillars of this legislation—and he will correct me if I'm misquoting him, I'm sure. I understood him to say that the new legislation is necessary to protect seabirds. He then went on to say that he feels the extended jurisdiction, which I assume is into the economic zone, would help with enforcement. He also said the bill would enhance enforcement in general, in the way it is structured; and finally, that the increased fines would be a detriment to rogue ships, I believe he said, that were polluting our waters. The CMLA, the Canadian Maritime Law Association, is definitely in support of any legislation or effort that can contribute to getting rogue shipowners fined into reducing pollution, etc.

It's our position that this particular bill does not attain any of those four goals.

With regard to whether the legislation is necessary to protect seabirds, our position is that we want to protect seabirds but that we have legislation in place to do so. It's a question of enforcement of the legislation, not a question of overlapping legislation; we don't need another bill, but we need to enforce the existing legislation. The Canada Shipping Act and the Canada Shipping Act, 2001, which will replace it shortly, when the regulations are in place, already provide for fines that are equal to \$1 million. It applies in the EEZ already. It covers all aspects of pollution, including oiled birds.

Our point is that instead of diluting the effort into different departments, different pieces of legislation, and different aspects of enforcement, it should be channeled into one aspect of enforcement in order to use the public funding available in the best possible way to attain the enforcement. So our position is that the legislation is not going to attain the goals that we are all aiming for, but we're not so optimistic as to think your recommendation to Parliament will be to scrap the bill.

What we're doing is trying to point out a few changes that we think could improve the bill and should be made to the bill. The first one concerns international law, and Ms. Legars from the shipping federation was quite eloquent on this point a few minutes ago, and I won't repeat her. Perhaps inspired by her, I might say in French,

[Translation]

Canada is a sovereign country. I am sure that the members of the Bloc Québécois understand what sovereign means. It means that, in international affairs, we have the freedom to make our own decisions, we do not have to enter into treaties with other countries, and we do not have to be party to conventions with other countries. However, should that be the avenue which we choose, although Canada is a sovereign country, we have the responsibility to respect what we have signed.

[English]

Canada has adopted several international conventions of its own will, conventions the CMLA supports. We feel this bill runs contrary to our international obligations and, frankly, makes Canada look stupid. It's as if we signed a convention and then six or twelve

months later we made legislation that said we hadn't read the convention we signed.

The best example is the United Nations Convention on the Law of the Sea, which almost every country in the world is a member of and which Canada ratified on November 6, 2003, one year ago. Here we are in front of a committee making comments on legislation that runs contrary to the obligations we undertook in the United Nations convention. And the examples we give are that, well, they do it in the States; George Bush is coming today, so maybe we should pay more respect to what they're doing in the States. The answer to that is, the United States has refused to sign the United Nations convention. They are not a member of almost any of the conventions Canada has joined. Therefore, they're obviously sovereign in their own way and free to do what they wish.

But we have to make a decision. Should we join a convention and respect it or should we not join the convention? If Canada has made the decision to join, we should respect it. To make legislation that goes contrary to what we did 12 months ago on the international scene makes us look stupid, if you'll excuse the adjective.

But the UNCLOS is not the only convention this bill runs contrary to. By the way, Anne Legars has mentioned in what way it runs contrary. It runs contrary to the manner of enforcing the law in the economic zone, which in part XII of the convention is very clearly spelled out and must be done in a very clear and diplomatic way. But there are other conventions this legislation contravenes, and one is MARPOL. The principal international convention on pollution from ships, marine pollution, is called MARPOL. It's a convention almost every country in the world is a member of, and Canada is a member of this convention.

What this bill does is two things. First, it imposes documentary requirements on ships that are simply passing through our waters, documentary requirements that are not required under MARPOL and that, I suggest, run contrary to our MARPOL obligations. Second, and even more important, is the fact that the legislation overlaps with the MARPOL legislation we have in place that allows for million-dollar fines and allows for everything this bill is aiming for. That's in the Canada Shipping Act and will be in the Canada Shipping Act, 2001, when it is adopted. The CMLA came to this very committee three years ago now, in 2001, and supported that bill, and we put those MARPOL obligations in the CSA, 2001.

A third convention this bill runs contrary to is the CLC, the Civil Liability Convention. Canada joined it in March of 1989. The CLC is a trade-off between shipowners and the oil trade. It only has to do with tank vessels, that's true, but the fact is that this bill would allow the government to impose a civil liability on a tank vessel that goes contrary to our CLC obligations. The CLC was a trade-off between how much the oil industry was injecting and how much the shipowning industry was injecting, and this would allow us to go further against the shipowning community, which is contrary to the CLC, with regard to tank ships only.

Our suggestion is that the bill can be amended, should be amended, and must be amended in order to make sure our convention obligations are respected. That is what sovereignty means to us.

With regard to overlapping, we have two aspects here. You have to understand there are at least four pieces of legislation that can be used in criminal prosecution for pollution. This bill handles two, the Canadian Environmental Protection Act, 1999, and the Migratory Birds Convention Act, but there are two others, the Fisheries Act and the Canada Shipping Act. The problem there is that with the overlapping criminal liability, we feel it is diluting the effect.

An example of that is where a vessel might be charged for pollution under one piece of legislation but somehow the Crown has picked the wrong piece of legislation. That happened recently in Newfoundland and Labrador; they picked the wrong piece of legislation. They just didn't think it through and didn't pick the right piece of legislation. We should rather try to channel our efforts into one scheme, one scheme that would be all-encompassing and that could be used without error in order to prosecute polluters.

● (0935)

With regard to civil liability, there is also overlap in this bill. The overlap is in the fact that the bill allows two different manners of getting civil compensation for pollution damage, whereas we already have our whole system of compensation under the Marine Liability Act, which Parliament adopted in 2001. Part 6 of that act deals specifically with civil compensation, and there are two ways. One is that a person can make a claim, and in another part of the act—I have the sections if you wish to see them—the court can order, as part of sentencing, that cleanup costs, etc., be paid.

We have no problem with ordering polluters to pay; it's certainly something we support. But the fact is that by diluting different acts you're diluting government funding and you're diluting the possibility of having an effective control of pollution.

Finally, the bill imposes strict, vicarious criminal liability on employees. "Strict" means without any fault or negligence. "Vicarious" means that even if you didn't do it yourself, you're going to be liable for what someone else did. This applies to masters and chief engineers under the bill. Masters and chief engineers are employees of shipping companies, and if they pollute, just like any other person, they should be liable. But the vicarious portion of the clauses of this bill says that the master and chief engineer will be liable, regardless of whether they're involved or not and whether they knew about it or not, as soon as the vessel pollutes. This is, we suggest, wrong.

One of the constituent members of the CMLA is the Canadian Merchant Service Guild, mentioned a few minutes ago. They represent masters and chief engineers across Canada. It's like a union. Their members are now going to be vicariously liable in criminal law and face potential fines of up to \$1 million for something they didn't do. That is another point we wish to raise.

● (0940)

[*Translation*]

In conclusion, as was said by the Shipping Federation of Canada, we feel that the committee ought to make a decision today. Rather than rushing through clause-by-clause in 15 minutes after a couple of questions, we suggest that the committee give itself a few hours. We are here to help you.

You have three lawyers here, and it will not cost you a cent. That is most unusual. The three of us are prepared to help you draft five or six clauses which would radically improve a piece of legislation which already has the support of all political parties. It would be all the better were it improved and corrected. We are here to help you, should you give us the opportunity to do so.

[*English*]

Mr. Chairman, those are my remarks.

Thank you.

The Chair: Thank you very much, Mr. O'Connor.

We appreciate the suggestions all of you have made and the input you've given us.

We'll now go to the committee and our pro forma rounds. This is ten minutes through the various parties, and then we go back for rounds of five minutes.

We'll start with Mr. Mills.

Mr. Bob Mills (Red Deer, CPC): Thank you very much.

Thank you for appearing today.

This takes me back to 1996, when I asked the first question about the birds dying in Newfoundland. Nothing much has changed. Hundreds of thousands of birds are dying every year. Bird populations are being seriously affected. The people of Newfoundland and along the coast are really concerned. You're saying we have laws that are doing the job. Obviously, there would be a lot of people who would in fact disagree that they're doing the job.

Most recently, we had an oil spill from an oil drilling platform. I understand that tests being done on the birds that are washing up dead show that they're in fact being polluted by ships that are passing through the oil slick and releasing their bilge water so as to get away with releasing it. Obviously, that doesn't show very much integrity from the shipping industry and from the group you represent. If they're prepared to do that sort of thing, then they're obviously prepared to break most any law that in fact exists. I would put forward that there are no laws, then, that protect the bird population or the wildlife of that area.

It's great to sit here and say this bill is a bunch of... Did you say we would look stupid passing a bill like this, that this is just to go along with the Americans? I don't think so. I think it's about the wildlife. It's about those dead birds that are showing up on those shores and have been for a long, long time. It's about time we had something that in fact applies.

I understand our sovereignty within those waters if we sign international laws, and that should be up to us. Maybe we shouldn't be signing quite so many as we do, but I think that's a whole other issue.

Obviously, we take this very seriously. We need the legislation, we need the surveillance, as you point out, and we need to enforce the laws that are there.

Having ridden through the various phases of this bill, I hope this bill does in fact end the turf wars and will provide better surveillance so that we can arrest these ships. I hope that by using satellite imagery and by using the sorts of technology we have today, by working closely with National Defence and the coast guard, we will start catching some of your members and enforcing the laws that are there. I hope they are as severe as those of the U.S., so as to prevent the kind of pollution that goes on. As well, I think it's important that through this bill, Transport, Justice, National Defence, and Environment are now going to work together, and that something will in fact happen when they are arrested.

You say the captain shouldn't be responsible. Who is responsible? If the person in charge of that ship...I don't care whether he did it or not, somebody has to be responsible. He can't just keep passing the buck, saying it's somebody else's responsibility, so they get away with it.

I guess my first question is, what is the consequence if this bill goes through as it is? What do you see happening to the shipping industry that you represent?

●(0945)

Mr. Michael Broad: First of all, as a Canadian, I'm very concerned about ship pollution.

Let me ask you a question. What parts of our submission run contrary to your arguments?

The Chair: Mr. Broad, perhaps I can interject. I think you can suggest that rhetorically, and we'll come back to Mr. Mills. But the purpose of the input you're giving is for us to reflect on. I'd rather not get into that, if you wouldn't mind. I don't think that's productive.

Mr. Michael Broad: Okay.

The Chair: Perhaps you can address the question.

Mr. Michael Broad: All we're saying is that we would like to see some amendments to Bill C-15 that we think you can live with. We think Canada has been a leader in signing on to international conventions and in fact in taking part in putting them together. We think we have to respect what Canada signs. We think that with our amendments you can have your cake and eat it. That's all we're saying. We'd like to know if you've read our amendments.

Mr. Bob Mills: The officials from the department put this forward. They testified before this committee. Certainly they haven't raised any conflicts between international law and what we have in

front of us. As I say, we did make changes to Bill C-34 to try to address any problems that were there. I think, though, it's time to get on with it.

In fact, following along again with the Americans, if they have legislation that's there and is working, which it appears to be—the minister mentioned the kinds of fines the ship companies have there—then that's where we need to go.

Ms. Anne Legars: As we mentioned, we have no problem with higher fines. We have no problem with stronger enforcement. We just have problems in reaching an international framework. It's paramount for an industry such as ours, which is international by its very nature. The framework within which it is operated needs to be the same in all countries.

Mr. Bob Mills: I would think the way to handle that, rather than to discuss the amendments, as was suggested, would be in fact to get a legal opinion, to ask the Department of Justice. A bill it has studied and gone through and passed on to us, saying it's fine—how is it all of a sudden that we now have all these contradictions? I find it a little bit troubling, Mr. Chair, that in fact our officials would be so incompetent, as you're suggesting, to put forward a bill of that nature.

The Chair: Mr. Mills, if I may, we do have officials from Justice here. If there's any recourse with respect to questions raised, we can have those questions identified and answered through our staff. I'd like to attempt to stay with our witnesses and extract information relative to their testimony. Then the committee can decide whether it wishes to compare those answers with—

Mr. Bob Mills: Can I get back to my question on the consequences for the shipping industry of this bill being passed? What consequences would there be on it as a business?

Mr. John O'Connor: May I answer the question?

Thank you for the question. First off, thank you for listening. I think that's important. I'll tell you, the last time I was before this committee, there weren't a lot of very good questions.

I think the answer to your question is that it's going to affect the shipping community in different ways. I too am troubled to hear that Justice has signed on to this. The fact that it is going to run contrary to international conventions is going to lead to litigation, lots of litigation. It doesn't mean there's going to be a ship arrested every day. That's not true. These problems do happen regularly, unfortunately, but I don't think it's a daily thing. Unfortunately, it's a regular thing, maybe a weekly thing. There's going to be a lot of litigation, number one—unnecessary litigation, which is costly.

Number two, we're trying to increase enforcement, yet we're now going to ask game wardens—standing on the shores of Newfoundland and Labrador, I assume, who are going to see these oiled birds, or see oil coming on shore—under the Migratory Birds Act, to make decisions about arresting or detaining or boarding vessels in the economic zone, which is 200 miles offshore. Game wardens don't have any ships. They have Zodiacs. I don't think they're going to go out to the ships on Zodiacs.

I think you're going to see enormous practical problems with enforcement. What we're for is enhancing enforcement by channeling it to the group that has the ships and knows what to do—the coast guard. It's under the Canada Shipping Act. We're not against enforcement; we're for it.

Why are we spending part of the money on game wardens, part on the coast guard, and part on the fisheries inspectors? We should be channelling it. One of the effects of the bill will be to water down available funding, and it will probably have no benefit, and may even reduce the benefit of existing legislation, with regard to enforcement. There's an answer to your question.

• (0950)

The Chair: Thank you.

Mr. Mills, I'm going to have to hold on to that. We will come back.

Mr. O'Connor, I know you weren't intending to impugn the past committee vis-à-vis their questions, but I am told it was the transport committee you appeared before.

Mr. John O'Connor: That's why.

The Chair: This is a new committee too.

[*Translation*]

Mr. Christian Simard (Beauport—Limoilou, BQ): I would first like to thank all of the witnesses. Your presentations were very interesting. However, your request that we immediately begin work with lawyers from an association leaves me feeling uncomfortable. Such a proposal makes us uncomfortable because — and as a lawyer you yourself will know this — there are almost as many legal opinions as there are lawyers. You will understand that working with lawyers who have ties to one of the interested parties, and who have interests, is no way to legislate. That is not the way that this committee works.

That does not, however, diminish the importance of the issue that you raise. Why do things simply when we can make them complicated? I spent a long time working for organizations which are active on environmental issues. In this field, legislation is not always driven by a desire to be effective, but, rather, to make it look like a lot is being done.

At the end of the day, is better protection being offered? Is there more monitoring? Is the system truly effective? These questions merit our attention.

Unfortunately, in assessing a report which could be founded, there is always the temptation to do nothing, or to apply the current legislation. That could also be the wrong approach.

I am sure that you have read Ms. Johanne Gélinas' report on the lack of effective—and that is a real euphemism—enforcement of the MARPOL Convention. And only the waters surrounding Newfoundland and the Atlantic, in the east, are taken into consideration.

We are now at the stage of adopting or amending the bill clause-by-clause. I have to admit that I have not read the technical amendments which are being proposed. I never received them. I have not yet seen the proposed amendments.

I am very uncomfortable with this last minute proposal which sees us being pushed to accept industry amendments.

That being said, I feel that the legislation process is moving too quickly. There is a lack of coordination between the various departments and it seems to me that not enough discussion has taken place. There is also a lack of clarity surrounding the available resources. I have already asked this committee if adding another type of warden is indeed the best way to proceed. Will three different police officers approach the same incident from the perspective of three different pieces of legislation? I find that troubling.

I now understand your opinion on non-compliance with the convention. I had always thought, however, that it was possible to go beyond conventions which often just offer minimum standards. Perhaps I am mistaken.

I would like to talk about the legal confusion that this could cause. As a member of the committee, I am very uncomfortable with the idea of adopting a bill on which I have been inadequately briefed by the departments. I still do not fully understand the issue at stake. That puts me in an awkward position.

What should we do now? That is the question I'm asking of you. Please summarize the amendments that you are proposing—Ms. Legars gave us a rough idea earlier—so that we can fully understand your position, or at least have a better understanding of it.

[*English*]

The Chair: Mr. Simard is addressing that to anybody who would wish to respond.

Ms. Legars, you had indicated particular amendments, and Mr. O'Connor is indicating that he also would like to speak.

Mr. O'Connor, would you like to address that, and then I'll go to Ms. Legars?

• (0955)

[*Translation*]

Mr. John O'Connor: Thank you, Mr. Chairman.

Every lawyer has his own opinion on international conventions. Personally, I believe that it is acceptable to go beyond what is set down in a convention, provided that in doing so, the convention itself is not undermined. If the convention is silent on a given issue, it is still possible to establish a judicial framework on the issue, which is not in contradiction to the convention. It can serve as an accessory tool and can also be further-reaching than the convention.

The United Nations Convention on the Law of the Sea is very clear. Part XII comprises only three pages. You just have to read them. It is stipulated that a vessel in a given economic zone can only be stopped in particular cases.

This bill states the opposite. It states that our warden, believing a vessel to be involved in a pollution incident, can board the vessel and order it into a Canadian port, even if the vessel is neither in nor heading for Canada. We are not trying to circumvent all legislation dealing with pollution. We are simply trying to coordinate the convention with this bill.

If you read my letter, which you have a copy of, you will note that, unlike Anne Legars, I have not included specific amendments. However, I would be prepared to do so now. Moreover, that is what I am doing. Furthermore, if you read the section entitled Bill C-15 and UNCLOS, you will note that there are instances of contradiction between provisions of this bill and UNCLOS provisions. There are four such contradictions in the bill. It would seem fitting to check and amend them.

As Ms. Legars suggested, another way of proceeding would be to establish an exemption clause stipulating that the act be without prejudice to the convention. This may well be the easiest way to proceed, but it is an inappropriate approach for Parliament. We are in the process of drafting a piece of legislation which contravenes a convention and adding a provision stating that where an infringement of the convention occurs, it will not apply. I am not in favour of such an approach, but these are the two choices that we have for these two points.

We are proposing some six amendments. Regarding MARPOL, we feel that clause 8(2) ought to be amended because it requires vessels to maintain records which do not exist under international law and which, therefore, are not on board the ship. As soon as the vessel enters the EEZ, it ought, in theory, to have such records, but the captain is unaware of this requirement.

On page 5 of our text, we have made a suggestion regarding the problem of overlap between criminal and civil liability. We suggest that subsection 17.1(3) of the bill be replaced.

It is difficult to give you a verbal answer, however the information can be found in our text. We are here to help you insofar as we are able to.

[English]

The Chair: Thank you, Mr. O'Connor.

Ms. Legars.

[Translation]

Ms. Anne Legars: I will try to summarize as best I can in light of the fact that our brief is about 13 pages long. I do not want to monopolize the committee's time with overly technical information.

To cut to the chase, we have found five types of provisions which contravene UNCLOS and MARPOL. I am going to switch to English because my brief is written in English, and that way I won't have to provide you with simultaneous interpretation. The first provision is as follows:

[English]

...extension beyond Canada's international waters of provisions that do not comply with international law;

So you have a number of amendments to the Canadian Environmental Protection Act and the Migratory Birds Convention Act to extend the application of these acts to EEZ waters.

What international law requires is that coastal states can adopt laws on ship-source pollution in the exclusive economic zones when it is to conform and give effect to generally accepted international rules and standards. So in all the sections we identified that were saying it applies in the EEZ, we would suggest amendments that would add at the end of these sections, "when it enforces generally accepted international rules and standards established through the competent international organization or general diplomatic conference".

Of course, it's a little bit heavy, but it's just to show the intent, to show that the drafters of a bill know they can extend the jurisdiction in EEZs, provided they remain within this international convention umbrella. So it's just a way to signal that. We had four sections that were identified as having this problem.

With regard to granting of boarding powers that do not comply with international law, the bill introduced a number of amendments to the CEPA and the MBCA to grant boarding powers to game officers on ships in any location, including the EEZ.

International law has many nuances on that. It provides for a gradation of inspection powers, depending on the evidence of a potential violation, the location of the ship when the violation occurred, and the significance of the pollution.

We propose a number of amendments to reflect this convention. For example, in clause 6 of the bill, "For the purpose of verifying compliance with this Act and the regulations, a game officer may... enter and inspect any place", and here I propose an amendment, just to make it fit with international conventions. It would read, "including a foreign-flag vessel which is voluntarily within a port or at an offshore terminal", because this is the standard under international law. You cannot just board a ship anywhere, jump on it and say, "Well, I'm boarding you and I'm going to inspect you." It has to be in port, as a general rule, and so on.

Basically the exercise we did was to identify all the sections that go against international conventions and rectify them by copying and pasting, in a way, the wording of a relevant convention.

● (1000)

The Chair: Thank you, Mr. Simard. We're out of time, but we'll come back.

We'll go to Mr. Cullen first.

Mr. Cullen is pointing out that you are first, Mr. Wilfert. The chair is corrected.

Hon. Bryon Wilfert (Richmond Hill, Lib.): Thank you, Mr. Chair. I thank all our witnesses for coming today.

First of all, hopefully we will all conclude that the current approach is not achieving its objective. Birds continue to die, and therefore change is required. If that weren't the case, I assume, ladies and gentlemen, we wouldn't need this legislation.

Mr. Cullen, you received a letter from the minister in response to your concerns. The minister and I want to reiterate the following: the legal drafters made reference to international conventions and relevant Canadian legislation when drafting the bill, and we are confident that what we have proposed is in fact consistent with our obligations under international law, pure and simple. We want to better address this issue and obviously deal with the problem of illegal discharge. This bill is clearly there to ensure that the two acts of Parliament can be effectively enforced in the exclusive economic zone of Canada.

All of you have mentioned MARPOL and, in this case, the MBCA. I want to point out to you again that the legislation is consistent and the enforcement powers are consistent. The fact is, when you look at this legislation—and again, I want to re-emphasize this because I was quite surprised at the somewhat strident tone that was taken—this doesn't duplicate the Canada Shipping Act. It doesn't create any new responsibilities or changes in policy of the Government of Canada, but it addresses enforcement issues, and that clearly is what all of us around this table are concerned about.

You've mentioned the U.S. experience. The U.S. has not signed the UNCLOS but has taken a position of interpretation that is consistent with Canada's, in our view. So although they haven't signed it, the interpretation they've taken seems to be similar to ours. International conventions do not specifically deal with the domestic legislation of any state.

The Government of Canada is committed to ensuring there is effective interdepartmental cooperation. One of the concerns was about the lack of coordination; well, this bill clearly says that.

I assume that if the shipping industry complies with the 15 ppm limit established with regard to the oil bilge water issue under MARPOL, there would be no conflict with this legislation. But we are confident that it complies with international law. I taught international law for 20 years. I can tell you absolutely that we would look stupid, in the words of Mr. O'Connor, if we brought forth legislation that did not comply. Now, I'm not advocating that the courts are going to be the remedy, but I would suggest to you that the drafters, in consultation with the justice department, have come to the conclusion that these are consistent with our international obligations. The minister's letter to you clearly spelled that out. We want compliance.

I heard the comments of Mr. Mills this morning, which I appreciated. I was also concerned, and I have heard this issue with regard to the discharge or the spillage off the coast of Newfoundland. Whether or not that was done by passing ships, I don't know; I'm not in a position at this point to say one way or the other. But those kinds of things obviously concern us. You all tell us you are concerned about this issue, and whether or not certain parties do this deliberately or accidentally, you'd like to see it dealt with. Well, this bill has been around in one form or another for many, many years—and 300,000 birds are still dying on average every year. It

seems to me that the more we delay this, the more we're going to have a major environmental problem.

It's certainly your right to go to the courts if you don't believe this legislation is in fact in conformity, but again, I can only go by what I have been told in my discussions with both the Department of Environment and with Justice officials, who say this is in fact consistent.

• (1005)

I don't want to get into he said, she said. You've put your position forth to this committee, and I'm reinforcing the Government of Canada's position. If we don't agree, fair enough.

I don't know, Mr. Cullen, whether there was another letter sent after the minister's letter to you, from your side, but I can tell you that the minister's letter did try to address all of the specific concerns raised.

I'm not in any way dismissing the fact that you had issues. I think we tried to respond as effectively and consistently as possible in terms of the position of the Government of Canada. But the fact is that we need to provide for the culpability of owners, captains, operators, to make these penalties stick. They're not sticking. And until this legislation is dealt with, we're still going to have the same problem we've had for years and years.

I appreciated the comments today from Newfoundland and Labrador, as I appreciated all of your comments. We have a difference of opinion, and that's healthy in a democracy. But some of the arguments about the U.S. and so on do not, in my view, hold water—no pun intended. I suggest to you that we are prepared to make sure to not only have the fines on the books but also have them enforced, which to me has been the major problem.

Mr. Chairman, I really don't have any questions. I'm more just laying out some of the concerns we have in response to the letter we received and obviously to some of the comments we've heard here today.

The Chair: Thank you.

Mr. Cullen has indicated he'd like to respond; he does get a question in there.

Mr. Peter Cullen: I recognized one, thank you.

Thank you very much for your comments, Mr. Wilfert. I would have been pleased to respond to that letter had I received it. I don't have that letter. Perhaps you could give me a copy of the response.

I did write to the minister on October 8. The only answer I got was from the Minister of Transport, whom I'd copied on that letter.

We did submit a further letter on November 12. Maybe that answer is in the mail. I look forward to receiving it in due course.

Hon. Bryon Wilfert: The good news is that we don't run the post office.

I do have a copy of the letter. I'd be more than happy to share it with you, because it was sent. I'm quoting from the letter.

Mr. Peter Cullen: No, I appreciate that, and I'm grateful for that.

Coming back to the essence of your remarks, I think we've made it clear at this end of the table that we support enforcement. This to us is not a question of enforcement the way I think you and others have proposed it.

We think there should be greater enforcement. We think the vehicles are there through which this enforcement can be done. We've all seen in the last five years, and I'm sure the member from Newfoundland will support me on this, that the level of fines for pollution offences has increased substantially. It can still go higher. That's a matter for the courts to decide, but the framework is there.

We don't have a problem with enforcement and high levels of fines against world vessels and deliberate pollution incidents. What we disagree with is some of the remarks you've made. And I agree with you, it's not a question of he said, she said. We don't want to get into that sort of argument, no. We're just explaining our positions. But I'll support Mr. Mills in his remarks, that perhaps it's time for Justice Canada to take a second look at this.

I'd be very grateful if you or others around this table could take the remarks of the Shipping Federation, the CMLA, the Chamber of Shipping of British Columbia, the Canadian Shipowners Association, the Canadian Bar Association, and the Merchant Service Guild and put those opinions, put those briefs, before the Department of Justice for a second look at it. I think it would assist this committee, and certainly the legislative process, if they could look at those briefs again in the context of these discussions. Perhaps they'll have another thought process in terms of what the language should be in this particular bill.

There are ways to improve the bill, we think. We're suggesting them. We're not here to argue so much as to try to work with you to make this a better bill for the very goals you wish to accomplish.

• (1010)

The Chair: Mr. McGuinty, I'll put your name down. We'll come back after Mr. Cullen.

Thank you, Mr. Wilfert. We're out of time on that one.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair, and thanks to all the presenters.

I'll be perfectly frank: this is a new area for me to try to develop some expertise in over a short amount of time. I appreciate the presentations and the extensive documentation.

I'm wondering if we have a break in communication here.

I have a few questions, and I'd rather have shorter answers. I'm not particularly interested in giving a political diatribe about anything I personally feel on this. I think it's been well said already that it's not working as is, that birds are washing up and that ships are...we can call them rogue or whatever we like, but there are people polluting in the oceans. There's been a clear expression from a number of groups around, ones that we deal with consistently, that this is just not working.

First, with respect to the federation, you've mentioned that you do advocate higher fines. Does that exist in writing? Have you sent out communications to government seeking higher fines at any point, saying this needs to happen?

Ms. Anne Legars: At the national CMAC, which is the acronym for the Canadian Marine Advisory Council—it's a marine advisory council that meets every six months in Ottawa—there has been a working group on oily bird issues. I remember that the federation made a presentation at some point saying, among other things, that it would support higher fines, especially in cases of wilful pollution. In some given cases, we would be ready to go as *amici curiae* in a court case and say that as industry representatives we support higher fines. And there was a PowerPoint presentation, I think it was two or three years ago. So it's a stance we have been taking.

In our brief to Finance, we have also requested to have more money for aerial surveillance, because we knew they would need more money to have more effective aerial surveillance. We pushed toward that direction.

Mr. Nathan Cullen: Great. It would be good to see those documents, or a piece of the presentation, or whatever you have.

In terms of breaching the international framework, I'm also a bit incredulous to find, just in the number of months I've been here, how many lawyers we pass everything through to find out that we are in contravention of international obligations. That would be a surprise, and it sounds like the committee might be looking toward getting a second comment. I have strong interest and faith—and I'm coming from the opposition standpoint that I don't trust government for anything, but I trust the expensive legal fees we use in terms of getting it.

I wonder if someone can just walk me through, as briefly as possible, the idea that we are not in alignment with our international obligations. If this legislation as it stands right now goes through, walk me through what's going to happen. We're going to board a ship and we're going to do what? What's going to happen? Are we going to be brought before the International Court? Are we going to be called stupid by somebody? Work me through it.

Mr. John O'Connor: May I answer this, Mr. Chairman?

Thank you for the question. To answer briefly, it will definitely lead to litigation. It will not lead to the International Court; it would be in Canadian courts. I would imagine the situation would be that someone, in contravention of our international obligations, would detain a vessel in the economic zone, accusing them of pollution, whether or not they did it.

In part XII of the United Nations convention, it doesn't say anything about just detaining innocent vessels; it says you're detaining a polluting vessel. It sets out how it's to be done in the international sphere, in international waters. This is not in Canadian waters; this is in international waters, in the economic zone.

So there would be litigation, and the litigation would probably go to trying to have dismissed the charges laid against the vessel because those charges were in contravention of our international conventions. It would be before a court in Canada. Some people might say that would be a good thing because it might give publicity to this, but I personally believe we should try to respect our obligations because there's a whole framework set up in the convention as to how and in what manner you treat a polluting vessel in the economic zone. It's as simple as that. That's why it's set up in part XII.

• (1015)

Mr. Nathan Cullen: In reflection of Mr. Mills' frustration, for folks who have been working on this for years and have been seeing the consequences out the other end, it's just simply not working. I had a flight down with a Canadian ship's captain not three or four weeks ago, and he said similar things to what we're hearing today: if you're going to pollute, you head up north; if you can put your route through, you put it through Canada because you know the consequences; no one's going to find you, and if they find you, nothing is going to happen. This is a reflection from someone just working on the water. I know that would probably not sit well, but he didn't know I was a politician until we were finished our flight; I probably should have told him.

One of the other questions I have is with respect to who gets fined in the end. From what little I've seen of the international shipping world, with flags of convenience and owners being here and owners being there, we are trying to locate who's holding the bag and who's responsible. Mind you, if some innocent crewman is sitting on a ship and suddenly there's bilge water pouring out the end and he's losing his home, that's clearly not what the committee would be after, nor the government, in this legislation. At the same time, trying to find an owner or trying to find someone specific who you can go after is a concern. Where are they? Where might they be? Look at our own Prime Minister and all the rest of that stuff.

So my concern is, why is it a problem to go after the people who are on the ship right now and say they're in charge, whether they knew about it or not, particularly the captain and engineer? What's the problem with that?

Mr. John O'Connor: Can I answer that one, Mr. Chair?

The Chair: Yes.

Mr. John O'Connor: The problem with that is as follows. See a ship as a floating factory. It earns money 24 hours a day. It has to be earning money or else it's losing money; it's a very expensive business.

With regard to fines, it doesn't really matter if we know the name of the owner—although I wish we always could—because if you can fine a ship, and if you can get the ship to pay, then the owner is paying. Regardless of whether or not you know his name, the fact that you say to the ship, you're paying \$1 million, and the ship has to pay \$1 million, it means the owner has just paid \$1 million, and he is smarting.

I think the fact that we know the owner's name and whereabouts is really a red herring. That's why we personify a vessel. That's why you can take an action against a vessel. You can't take an action

against a desk, but you can take an action against a vessel in order to alleviate that problem. That's answer one.

Two, if you say, let's just give it to the chief engineer and master... I'm certainly not against a chief engineer or master being accused of pollution if he is part and parcel of the pollution.... If he's saying, okay, pump the bilges, then he should be prosecuted and fined. The vicarious problem is that he's automatically liable—he's only an employee—for whatever happens on the vessel. He has no money to pay for this. He has no lawyer. He has no insurance. He is basically an individual who is going to be prosecuted.

We saw a case in Europe with the unfortunate accident on the *Prestige*, the vessel that broke in half off the coast of Spain and France. The master on that vessel is still in Spain. He can't go home because he is personally being prosecuted. He has no money. Some good Samaritan put up bail to let him out of jail, but he still has to stay in a hotel. He has absolutely no protection. And that's been two years now that he's been in Spain, away from home. It's the wrong target.

You should be targeting the ship, targeting the owners. Directors and officers are in the bill, but masters and chief engineers, we feel, is going a step too far.

Mr. Nathan Cullen: Thank you.

In terms of boarding the ship, was it a Spanish trawler that was off our coast and we fired a shot over them some years ago? I think it was probably one of the more proud moments in Canadian maritime history.

I don't actually have a problem. Perhaps we're in international contravention, but the idea of getting on ships that are passing through waters...the economic zone is becoming a point of contention.

I wouldn't mind hearing from Minister Osborne, just some reflection. I know how important shipping is to Newfoundland, the history and just about everything. If there's any province in the country that's important....

I'd like reflection on some of the comments you've heard today from the other analysts.

• (1020)

Hon. Tom Osborne: Thank you very much, Mr. Cullen, for the opportunity.

I'm delighted to see that the Canadian Shipping Federation and the national Maritime Law Association want to cooperate and solve these problems. I guess the best way to do that is when a vessel is before the courts, be there to help ensure they are prosecuted and the fines are levied. I welcome your cooperation in doing that on a go-forward basis.

I don't know if it's been there in the past. I haven't seen any evidence of it. But on a go-forward basis, from a provincial perspective as well as a national perspective, we would certainly welcome that assistance.

The reality here is that it's working in the States. These measures are working in the States. What we have in Canada is not working.

The average fine in Canada now is approximately \$25,000. They probably pollute 20 times before they're caught. If you break that down, that's far less expensive than having their bilges cleaned legally in port.

We need these measures. There's no way around it. I think Canada's obligation to international conventions should really be secondary to Canada's obligation to our provinces, to our environment, to our economies, to the resources, to wildlife, and to the industries that are so important to coastal communities that rely on all of these.

The Chair: Thank you, Mr. Osborne, and thank you, Mr. Cullen.

We're now going to the five-minute questions. I have this order: Mr. Jean, Mr. McGuinty, Mr. Gagnon, and Ms. Ratansi. We'll go back and forth in that order.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you.

Thank you, speakers, for coming today. I really appreciate that, and I think all the other members do as well.

I am from a landlocked area, Fort McMurray, so I'm a little bit out of my depth here, but I will say that when I came to this committee and began to learn of what was taking place in our international and 200-mile limit, I was horrified at the number of animals that are dying as a result of man-made spills.

I was interested as well, Mr. O'Connor, when you were arguing on one side that this legislation is duplicating current legislation under the Canada Shipping Act, which I have read, but on the other hand it is too severe, given its strict liability component on masters and ships' captains.

I found also with interest that it's very similar to personal injury law, where strict liability and vicarious liability apply to employees and employers. I thought it was very similar, and it may have some effect, quite frankly.

On that vein, I'm looking forward to the legislation passing, although I'm not looking forward to it passing in the current vein. I have to tell you that I think the legislation itself and the fines are too simple, and in my opinion the fines should be much more severe on ships and other personnel.

My question is more toward Mr. Osborne. Thank you very much for coming, sir.

I discovered through business and many years that sometimes it's better that information get to the people themselves through marketing, etc. That would in some way discourage them from coming to Canadian waters. As has been said by my colleagues, Canada is known as being the place to dump, if you're going to.

First, is there some form of marketing that you would suggest to get this message out to people that we will not tolerate this any longer?

Second, would it not appear to you and the other guests here today that this is more an issue of enforcement, not enough money being

spent by our government on investigating, surveying, and finding the perpetrators of these acts?

Is that not really the issue?

Hon. Tom Osborne: Thank you very much. I should say there are a lot of Newfoundlanders in Fort McMurray.

I guess one point I omitted to make is that I've spoken with not only the previous and current federal ministers of environment, but also the environment ministers from all of the eastern provinces. We have an Atlantic caucus. The environment ministers, my counterparts in the other Atlantic provinces, are all fully supportive of the message I'm bringing here today.

The best marketing tool here is what we know has worked in the United States. The best way to get the message out to violators who continue to break the law is to have them heavily fined and have those convictions stick. It has worked in the States. They dump in Canadian waters before they get to American waters. The reason for that is they know if they dump in American waters they're going to be caught. They're going to be charged, the charges are going to stick, and the penalties are severe. That is the best message we can get out to ships that navigate our waters.

Do we need additional resources? Absolutely. If we're going to bring in the measures we see here in Bill C-15, which, as I say, I and the other eastern ministers support, if we're going to see it really be effective, we need additional surveillance. We need better enforcement.

Yes, wildlife officers should perhaps be a part of that enforcement, because they're there all the time—and they use more than Zodiacs. They're on the water. They see what's happening. We need to have the resources available to really be effective here. Part of the suggestion I've made is that fisheries enforcement, wildlife enforcement, and national security, which is probably going to be a focus of the federal government in coming months and years, can all add to the surveillance that is needed. We need cooperation amongst the different departments and agencies that are involved.

Thank you.

• (1025)

The Chair: Thank you, Mr. Osborne.

We'll now go across to Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Thank you, Mr. Chairman.

I apologize for being late. I was stuck in the advance-team traffic in downtown Ottawa that was expecting President Bush, so my apologies. I missed a number of your presentations, but I was able to catch the gist of them from my colleague.

I'm having difficulty understanding the motivating factors for your positions today. I am a former corporate lawyer and an international environmental and natural resources lawyer. I cannot believe that the purpose of your presentations today is to bring to the committee's attention the fact that there is no legal symmetry between the international conventions and potential domestic laws.

I know that the legal liability provisions are going to rock your industry's world. That may not be such a bad thing given what we heard from the minister. There is jurisdiction shopping, ocean shopping, happening on a regular basis in the maritime world, and it has been going on for many decades.

The question I want to put to you is this. What are the real interests at play here? Are they economic interests? As an industry, is it going to affect your risk management? Is it going to make it more difficult for you to attract capital? Is it going to make it more difficult for you to achieve insurance coverage? Is this about officer and director liability? Is it going to break through the veil of ownership as to who is in fact running a number of these vessels? What is really at play here?

On question number two, the world is moving on. In terms of corporate responsibility, having advised a whole series of companies in sectors over the last 15 years, I can speak from experience. For example, when I was advising the Chilean government on new mining regulations, we very much looked to the Canadian mining sector. If you look at Chilean mining laws today, you will find great symmetry between Chilean mining laws and Canadian mining laws.

The notion that economic actors can run and hide seems to be almost over. Many economic sectors have decided that as a matter of corporate responsibility, they're going to get ahead of these issues, far ahead of these issues. As an economic sector, isn't it an intelligent thing for the Canadian shipping industry to lead the planet rather than lagging behind the planet? I'm not suggesting that we're lagging behind the planet, but, for example, isn't it time to be looking at the positive competitive aspects, the competitive enhancing aspects of the new, more stringent standards in this bill?

● (1030)

Ms. Anne Legars: May I?

The Chair: Ms. Legars.

Ms. Anne Legars: What is at stake for us as an international shipping industry is that less than 5% of the fleet is a problem fleet and over 95% are good compliant operators. When you have the 5% who do not comply, they gain an unfair competitive advantage over everyone who does comply. That's a concern for the 95% who comply. What is at stake is for us to have those guys lose their unfair competitive advantage.

Another concern is that each time you have a problem at sea, you have pollution. All the media are after it. Who gets the blame? The whole industry is blamed, the 95% of industry who are compliant, but it's spreading in other places as ships are polluting, and so on and. It's why shipping has such a bad public image. It's a concern for the 95% good operators, and it's why we want this fixed. We want stronger compliance, but now what do we do?

We need to target the 5% who are non-compliant, but how? Well, try to get them by surveying the coasts and ports, and try to set higher fines. This you can do. You already do it under the Canada Shipping Act. If you want to do it under the other acts, that's fine, but it will make things more complicated. There will be more of a chance that because of bad cooperation between the various departments, you will have a bug somewhere and lose the case. That's your choice, and that's fine.

The problem is when you decide to step into the international conventions, you basically break this international framework that allows 95% of good operators to have efficient operations throughout the world and to carry out international trade efficiently. It hurts the good operators.

I submit that you should focus your energy on money for enforcement, to have good internal processes between the various departments to make sure that when a case happens, you get it—that kind of thing. This is basically what is at stake for us with this bill.

The Chair: Do you have just a short additional answer, Mr. O'Connor?

Mr. John O'Connor: Thank you. It will be very short but will get to those questions.

Why doesn't Canada lead rather than lag? My suggestion is that Canada is a world leader in the marine field. We are absolutely in the forefront of all international conventions in the marine sector. You may not know it, but one of the civil servants here from Ottawa, from the justice department, chairs the legal committee of the International Maritime Organization. That's the United Nations.

We are leaders in the conventions. That is why it's so difficult to accept that our own national legislation might not respect conventions we have promoted and have helped to have adopted. We are leaders already; we are not lagging.

On the second question, about what is at play, I'll just repeat here that the Canadian Maritime Law Association, our association, is not what I would consider to be a lobby group, in the sense that we're not on one side, either of shipowners or anyone else. We actually represent all fields.

What is at play here is that we're concerned about Canadian legislation. It's not really an economic question for us. I think the master and engineer question is economic, because you can see what could happen to individual Canadians or foreigners. Basically we represent all aspects, from the unions to the owners, from the lawyers to absolutely everyone. We only come to these committees when we have consensus or unanimity. Here we have unanimity. I don't think there's any sort of hidden agenda; we're really here to express our concern.

The Chair: Mr. O'Connor, your boss wants to shoehorn just a little bit on the back of that.

Mr. Peter Cullen: Mr. McGuinty, when you said what's with the Canadian shipping industry and isn't it time they led the planet, I don't know if you meant that the remarks we're hearing at this end of the table are that you can go north and dump. These are not all Canadian ships that are doing this. In fact, the vast majority of the Canadian shipping fleet is a domestic fleet and doesn't go down to some of these areas we're talking about. There are a lot of Newfoundland shipowners who I think are not dumping off the coast of Newfoundland.

So when you ask what the Canadian shipping industry is doing, that's not really the issue, I think. The question is what is happening out there and how we can best deal with it. That's what we're trying to address.

•(1035)

The Chair: Thank you, and thank you, Mr. McGuinty.

Monsieur Gagnon, s'il vous plait.

[*Translation*]

Mr. Marcel Gagnon (Saint-Maurice—Champlain, BQ): Thank you, Mr. Chairman.

The subject of this meeting is of great concern to me. I've spent part of my life, 44 years, on the shores of the St. Lawrence River. I haven't had the advantage of living on the seashore, but still, it's a place where ships go by. Apparently shipbuilders or owners are quite responsible, and 95 per cent of them comply with the regulations and laws. I find that figure a bit exaggerated. Having lived on the shores of the St. Lawrence, I can tell you that the 5 per cent who don't comply with the laws and regulations harm the environment. Who causes the death of 300,000 birds every year in Newfoundland? People who don't respect the environment.

I agree with those who say that enacting legislation isn't enough, the legislation also has to be enforced. On that score, the government should also take some of the blame. However, I totally disagree with those who say that it's unnecessary to hold ship employees responsible. I personally called in inspectors when there was a spill on the river. It wasn't as serious as what you see at sea. And that's lucky, because if it had been, all of Quebec would have been ravaged. So I had someone from the Department of the Environment come. The facts were reported and I was told that nothing could be done: it was not known who was responsible for the spill. What is known, though, is that it was an employee who decided that it would be cheaper to drain the ship on the river rather than in port.

People concerned about the environment regularly voice criticisms, such as Louis-Gilles Francoeur, a journalist and environmental expert at the daily *Le Devoir*. According to him, until the legislation is tougher, we will continue to pollute the planet. A month doesn't go by without news of terrible disasters.

If we're told that enacting this bill is pointless given that we don't enforce the other legislation, I accept the criticism. It is actually possible that we're not tough enough. Enacting legislation is not the end of the story; it also has to be enforced. However, if you tell me that it is inappropriate to hold employees responsible, I don't believe that. Living in Champlain, I've often interacted with people who boat on the St. Lawrence. There are a lot of boaters there. They've always told me that being allowed to refuse to pilot a ship that was in poor condition was to them a form of insurance. But that doesn't stop the ship from going back up the St. Lawrence.

Ships that pollute are apparently sailing and going up the St. Lawrence all the way to the Great Lakes. They apparently can't go to the United States. You also have those ships where you live. I'm convinced that it's time to make shipping more responsible, not to destroy it, but to improve it and bring it into the 21st century. We have to stop polluting the planet and understand that if we don't, someone's going to pay for it.

I'm in favour of passing the bill, but I also think that we should enforce the legislation. The Auditor General made some criticisms to that effect. She stated that we should first enforce some of our legislation, even if it's not particularly good nor particularly bad.

In closing, I'd like to welcome the minister from Newfoundland. In his province, he's experiencing the same kind of situations as I am in Quebec along the St. Lawrence. So I'd like to ask him whether he's encouraged by the fact that it isn't considered necessary to hold ship employees responsible. I'd also like to know how, in his opinion, the number of disasters could be reduced.

[*English*]

The Chair: Thank you, Mr. Gagnon.

Mr. Osborne, would you like to reply to that?

Hon. Tom Osborne: Thank you very much, Mr. Gagnon.

I agree with your comments. I agree that we cannot only look at the vessel owners or the vessel as being responsible here. Oftentimes it is the owner who gives the order to discharge at sea, but we can't always assume that this is the case. There are times when operators or crew on the vessels also are responsible for discharging bilge at sea. It's not only the oil, but also detergents, cleansers, and other chemicals that are part of the bilge that have very serious effects on our environment. So I agree very much with your comments.

•(1040)

The Chair: Thank you, and thank you, Mr. Gagnon.

Ms. Ratansi.

Ms. Yasmin Ratansi (Don Valley East, Lib.): Thank you, Mr. Chair.

Thank you for coming.

I am a little puzzled, so I will ask some clarification questions.

Madame Legars, I will ask two questions, but don't respond until I'm finished with the second one as well.

You made a comment that you would like to fix subsection 18(3). Could you let me know what specific area in subsection 18(3) you would like to fix?

As I was listening to your presentation there was a lot of apparent contradiction, not amongst you but between Bill C-15 and what your interpretation is. As I understand it, when Bill C-15 was being drafted, the Department of Justice did take into consideration the international convention we have signed, and they noted that we are not contravening it. That's their position. I would like to know why you think it is really contravening it.

The main purpose of Bill C-15 was to make enforcement effective in the EEZ.

Mr. O'Connor, you had some concerns about documentation and mentioned that 95% of the apples are good apples and only 5% are bad apples. What have you guys done about peer pressure on that 5%? Basically you're saying yes, there should be enforcement. In my understanding, Bill C-15 has a very cohesive approach to enforcement, because previously things were all over the map. Now we have the Department of Transport, the coast guard, and the Department of Environment—everyone—using their resources effectively to ensure there is better enforcement.

I come from the risk environment, and I am an auditor by trade. If you're really a good apple, why wouldn't you maintain records? If I went through your records and saw that you didn't pollute something, you'd be out and gone. Birds are still dying. So if we have this problem, how are we going to solve it? I'm sure all of us collectively want to see our environment in good shape.

If you could please answer my questions, I'd appreciate it.

The Chair: Thank you, Ms. Ratansi.

Ms. Legars, and then Mr. O'Connor.

Ms. Anne Legars: Thank you.

First, we don't actually have a problem with subsection 18(3). We think it's good, but it's very limited. We would like to expand it and use it as a model. Basically that is what is said on page 15 of our brief.

That is one thing. As for the difference of interpretation we have concerning international conventions, we did our assessment and this is what we found. In the brief we submitted we listed all the sections with which we have problems. The amendments we propose basically show where the gap is. You can see the text with and without the amendments and you can see the differences and where the gap is. This is our assessment.

I'm very sorry the Department of Justice didn't make the same assessment, but as a witness, and, as I said, as a kind of barking dog—*un chien de garde*—I had to give this testimony to let you know that from the international shipping community side we see a big problem.

You will have to make your assessment and your own decision, but you will not be able to say you didn't know, that this was never brought to your attention. You will make all the checks you have to do, probably, but we just wanted to bring this to your attention. We think this is our role. For our members our role is to assess whether Canada is complying with international conventions in international shipping matters. We fulfill our mandate to our members in letting you know this was our assessment.

What have we done? We've done several things, one of which was to develop a code of best practices in bilge water management. That was approved by our board and circulated to our membership. It was a kind of checklist of best practices. We appeared a couple of times before the finance committee, as I said a few minutes earlier, just to say that more money should be devoted to aerial surveillance of our coasts, especially in Newfoundland and eastern Canada. We participate in CMAC things. We make proposals that apparently have not been picked up by the environmental people, as they never thought it was useful to contact us and ask us to testify in court as an *amicus curiae*. We proposed it. We will not champion a court case and say we want to testify if the Department of the Environment doesn't think it's necessary.

What else have we done? We've consistently supported strong enforcement within the international framework, because as I told you, we are so international that we rely on international rules of the game.

I think I have answered your questions.

• (1045)

The Chair: Thanks, Ms. Legars.

Mr. O'Connor, would you like to add to that?

Mr. John O'Connor: Yes, briefly, Mr. Chairman. Thank you for the question.

If you have a copy of the submission we made in writing—you don't need to go to it now, but if you do have a copy—we can answer the first question as to what we feel contravenes the United Nations conventions. On pages 2, 3, and 4, it's set out chapter and verse.

This morning we heard—for me it was the first time—an excerpt of a letter from the minister, who said the approval had been given to this by Justice. That's the first time I've heard it formally. I think I read in the minutes to the November 5 session that someone said that as well, which I don't doubt. But I'm surprised. I would like them to perhaps review it. I'm not saying they're wrong and I'm right; I haven't seen what they're saying. But certainly what we're saying is here.

On the second question, about the records, the point there is that the act, simply stated, allows the governor in council to make regulations setting out records that have to be kept. Ships transiting the economic zone just will not be able to comply with that normally. When Canada makes regulations in the *Canada Gazette*, part II, someone who is coming to Canada is certainly going to find out about these regulations, I would assume. They have to find out about them. But for someone who's on passage through the economic zone, it might be difficult.

We're simply stating that under MARPOL there is a list of documentation that must be kept, notably and most importantly the oil record book. This is a log book about the manipulation of bilges and all oils on board. Certainly Canada respects that, and it's in our legislation. But if we make our own regulations, in our submission it's contrary to that international convention, which sets out what you have to do internationally.

On the final point, about enforcement, there are really two points. One is, why does the United States seem to be more attractive than Canada in this game? It's because they have spent a lot more money than we have on their coast guard. Their coast guard is like a division of the military. It's not quite like ours. It's part of the armed forces. They've spent a lot of money, and perhaps successfully. If we had that funding to spend, I'm sure we would be able to do the same.

Our point is simply that by diluting, by giving game wardens certain powers and giving other people other powers—pollution prevention officers, fisheries officers, etc.—we're simply spreading out thin. It's a lot of people involved, but we think it's thin. If it's the coast guard, which we believe would probably be the best agency, then let's channel it there; forget the other guys. Let's give them more funding to do more surveillance—overhead flying, if that's the thing, or satellites, if that's the thing—but channel the funding. That's why we feel the enforcement under this bill will not be enhanced: simply because you're spreading out thinner the same amount of available public funding.

The Chair: Thank you, Mr. O'Connor.

Mr. Richardson, do you have a question?

Mr. Lee Richardson (Calgary Centre, CPC): Thank you, Mr. Chairman.

I wanted to thank this particular group for coming, because it has been very enlightening. This is obviously a very emotional issue for many people, no less than as expressed by the minister from Newfoundland today.

I for one, as a committee member, have seen and accepted that side of the story. Obviously birds are dying. There have been efforts made to prevent it, and nothing seems to have changed. Hearing your views this morning, the overriding impression I get is one perhaps of some frustration on your part, that perhaps your views have not been accepted or, if there has been adequate input, not allowed.

Let me ask you that. This has been going on. You had Bill C-34, first of all, and we've come back with this bill. Frankly, I've been a little surprised at the vehemence of some of the arguments. I presume it's derived from frustration in dealing with officials. You mentioned Justice specifically.

Do you want to expand on that and tell me whether you think, if you had more time...? Do you think this is moving along too quickly? Would more time give you a greater opportunity to impact the bill?

•(1050)

Mr. John O'Connor: Because you're looking at me, I'm assuming the question is addressed to me.

Mr. Lee Richardson: Well, I was surprised at the vehemence of your arguments. We don't usually hear that. They're usually a little more civil when they're sucking up to bureaucrats.

Mr. John O'Connor: Well, I certainly apologize if I've not been civil. That was not my intent.

Mr. Lee Richardson: I found it refreshing, frankly.

Mr. John O'Connor: That's what I was hoping.

I don't think "frustration" is the correct term, in the sense that we've certainly been able to set forward our position; we've been heard by the committee. I think frustration may have happened with Bill C-34. As soon as it came out we wrote to the minister. We asked to be heard by the committee at that time—I'm not sure if it was the same committee; I don't want to mislead anyone. But we were unable to be heard then, and that was unfortunate, but here we are being heard. I think we're having our chance to air our views.

I think the bill has been put together in a rush. Personally, I feel that. It's not in our submission as an association, but I think we did rush to put it together and I think we rushed a little too much. We could probably benefit from a bit more reflection on the government's part—and I think this committee could perhaps contribute to that—to produce a better bill. There's no doubt about it.

But I don't think "frustration" is the correct term at this point. It's simply that we're trying to make clear that there are parts of this bill we disagree with, ones we feel have perhaps been cobbled together a little too quickly. We're actually happy to be here to be able to say it to you, and we're glad the message is getting through.

Mr. Lee Richardson: Thank you.

The Chair: Mr. Broad.

Mr. Michael Broad: If I may, first of all, I apologize for that rhetorical question I posed to Mr. Mills, Mr. Chairman. This is the first committee hearing I've ever been involved in; I've only taken this position this year, so I don't have a heck of a lot of experience.

You speak of frustration. We wrote to the minister in September and we put forth our recommendations for amendments to the bill. We were contacted by people in the minister's department to come up to Ottawa and discuss those amendments. We got up there and we sat in front of them, people from the Department of the Environment. After I'd been sitting there about five minutes, he asked why we were against the bill and what the big deal was. And things didn't click. Then I asked him if he had read our amendments, and he said no. We had come all the way up to Ottawa to discuss amendments we had put forward a month before, and nobody had read them.

I must say, I don't know how many people here have read our amendments. I don't think anybody has.

So I'm a little bit frustrated with that. But I think overall, any industry likes consistent laws and consistent regulations, and that's what we're looking for. I think our amendments address that. They address the concerns of Newfoundland, of the Canadian government, and of the Canadian people, and I'd like people to take a good look at them, read them, and form their own conclusions.

The Chair: Mr. Broad, if I may, I'll just assuage your concerns to some extent by letting you know that the committee went over the briefs that were presented. It was at the direction of the committee, because of the concerns they had with respect to the substantive matters related to Justice and the international law of the sea. By implication the committee insisted you have the opportunity to come before it.

I hope that assuages your concerns to some extent, because it is not the committee that is on the defensive at the moment. The committee is willing, obviously, to learn from what you have raised out of your brief. You can infer from this that the committee has indeed read the brief and considered the substantive matters that were raised in it.

Thank you, Mr. Richardson.

Mr. Wilfert, you indicated you wanted a question and Mr. Jean indicated he wanted a question.

Mr. Wilfert.

•(1055)

Hon. Bryon Wilfert: Mr. Chairman, I'm somewhat bemused by the comment that this bill has been rushed. I don't know if the 300,000 birds that die on average think it's rushed. I don't know if coastal communities that are affected by pollution think it's rushed. I generally don't think that's a fair comment.

Mr. Chairman, Justice has reviewed it, and they were very cognizant of the comments when this was drafted. There is a difference of opinion, and I think that's fair. But to suggest that this bill is rushed.... In its former incarnation as Bill C-34, Mr. Chairman, it was reviewed and dealt with.

I just want to leave you with the following, Mr. Chairman. Canada respects its international obligations, purely and simply. Whether they're foreign vessels or domestic vessels that pollute within our exclusive economic zone, we're going to take every measure possible. I want to reinforce to all members of the committee the point that we are increasing both our enforcement and our surveillance provisions to ensure that this legislation works. There's no point in sitting around the table here if we draft something that is not enforceable.

Also, Mr. Chairman, the United States is the largest port destination in the world, but the ships pass through Canadian waters, so it's very convenient for some.

Now, one gentleman said only 5% are at fault. That may in fact be. I don't want to see it become 10% or 15%. I don't want to reward bad actors by having some get away with it and others not. You know, if you want perfection, Mr. Chairman, we're in the wrong business. What we are here to do is to do our best.

I believe that this in fact addresses those issues. If there's a difference, there may be another recourse.

Not only have I heard from the minister for Newfoundland and Labrador, but I'm cognizant of the views from other maritime provinces and from British Columbia. What I have heard from them and others is that this is a little, may I say, late in coming. I think we need to get on with the process.

Again, as I say, Justice has reviewed those comments, and if they have a different conclusion than they had initially, I don't have it. It is my understanding that they don't.

The Chair: Mr. Cullen, to respond.

Mr. Peter Cullen: This is just to tag onto Mr. Wilfert's remarks and to respond to something Mr. Richardson said earlier when he used the word "frustration"; he detected some frustration. Maybe a more accurate word would be "consternation", particularly when it comes to the question of what Justice may or may not have done. You'll see from our brief—and I won't go over it again—that we do, as you say, have some doubts or misgivings and some serious concerns as to whether parts of this legislation are onside. Now, they're expressed in our brief and I won't go over them, but I think that's probably a more accurate word—consternation.

Indeed, I repeat that it may behoove this committee to put the matter back to Justice again, since these briefs are before you, and have them look at it once again.

Thank you.

The Chair: Thank you, Mr. Cullen.

Mr. Jean.

Mr. Brian Jean: Thank you for the extra time.

I just want to comment, first of all, that as Mr. Cullen said, having two lawyers with two different opinions is usually correct. But with respect to Mr. McGuinty, we finally have the same opinion a former solicitor has, and both Liberals and Conservatives have in essence formed the same opinion, that something is wrong here and something has to be corrected.

I'm wondering whether or not the industry itself has looked at other options that are available, such as, as many businesses have done in Canada, some sort of buying group with some sort of incentive to have dumping by their members...some form of discount...or a consortium, where it could work in essence as its own watchdog, as many places do. For example, law societies are their own enforcers. Is there some way the industry could get involved in that where it would be more effective?

Obviously, what's going on right now is not effective. I'm not so sure how effective this new law is going to be, because, quite frankly, we only catch 5%, but we find less than 1% because of the money that's spent on it. Is there some way the industry could be involved effectively?

The Chair: Mr. O'Connor.

Mr. John O'Connor: If I might, I'll answer that very briefly. The industry is looking at it, as a matter of fact, at the international level and not necessarily in Canada. They're looking at it at the international level through insurance schemes. Let's say there are 5%—I'm not familiar with the figure, but let's say it's 5%—you would say are substandard or non-respecting vessels. The idea would be that they would have to pay much more for their insurance, and that is being debated on the international scene right now in the International Maritime Organization, which is the marine division of the United Nations. They're looking at other sanctions against what they call substandard ships.

It's a difficult debate because it's difficult to define what a substandard ship is. You could have a ship that's physically okay, but if it's operated in a substandard manner, such as with the master not respecting pollution laws or any other type of law, then is it a substandard ship? It's very difficult to pinpoint what that means, but the debate is ongoing as we speak.

I think the industry is trying on the international scale, and shipping is a very international industry. It's not a national, one-country thing. It's an international thing and they are trying to discipline themselves, I believe.

•(1100)

Mr. Brian Jean: I would be very interested in supporting that on a personal level, through the committee work and otherwise, if there was some way in which to encourage that for the future, because I think that's the only way to be effective, to be honest.

The Chair: Thank you, Mr. Jean.

Mr. Gagnon, perhaps you could finish off very briefly.

[*Translation*]

Mr. Marcel Gagnon: I'm still concerned about the 5 per cent. I'm still puzzled about them, because they're the ones who do about 100 per cent of the damage to the coast.

An airline wouldn't be allowed to land at Dorval or Toronto if 5 per cent of the planes were liable to crash on the city. That's a very high percentage.

Can we expect that ships will one day be inspected? I recall a disaster that happened somewhere in Europe. Had the ship been inspected, it never would have gone out to sea.

Can we expect that?

Mr. John O'Connor: Yes, because there's a program. The Shipping Federation of Canada might be better qualified than I to discuss it. It's called Port State Control. It's not a convention, but rather a sort of memorandum of understanding. There's one that applies to the Atlantic and another that applies to the Pacific.

The idea behind the program is that though a ship may fly a foreign flag, when it is in port in a signatory State, like Canada, local authorities may inspect the ship as though they had authority over the flag.

The purpose of Port State Control is to improve security and fight pollution. It's one more measure. It's not a cure-all. However, it solves some problems. It is increasingly popular.

Again, it is a matter of funding. Do we have enough people and money to inspect every ship? The answer is no.

As a result, we target certain types of ship, the most suspect or most dangerous, i.e., those that may disappear at sea, like bulk carriers. Normally, almost 100 per cent of them are inspected in Canada. Whenever we inspect a ship, if we find anything, we check the Oil Record Book, among other things, to see whether it has polluted before. If there is any indication that it has, the ship is detained and its owners may be prosecuted.

This initiative, which is very important, is quite recent.

Mr. Peter Cullen: Provision has also been made for an exchange of information. There is only one file per ship. If the ship is loaded in Rotterdam before travelling to Montreal, people in Montreal can access the Rotterdam file to see what has happened in terms of inspection, to see whether inspections were done and whether certain repairs were promised in Montreal, and to see whether those repairs were actually done, where, when and by whom.

[*English*]

The Chair: Ms. Legars, please keep it very brief.

Ms. Anne Legars: Yes.

Actually, Canada inspects 25% of ships on an annual basis. Some of the ships are inspected more often—for example, the old tankers. They really target the inspections to be sure to get the right ones, based on this international database, because when you know that your shipowner is not a good one, that a ship manager is not a good one, or that this type of ship is not a good one, you will target these on a priority basis.

It works, because five years ago 10% were bad ships and now it's less than 5%. Now there is this new, revamped MOU to even strengthen this port state control, so you know it's going in the right direction.

• (1105)

The Chair: Thank you very much to our witnesses. There has been some mention made with respect to striving for perfection, and I think Mr. Gagnon has in a very profound way cut to the centre and the essence of why we're here. We do still stand to try to be as accountable as we absolutely can. To the same degree of accountability that is possible, if we were to go on an aircraft, what risk factor would we accept? It's an interesting extrapolation of this issue, and I thank Mr. Gagnon for that.

And I thank you. I hope you do now appreciate that what we have been involved in is really the natural justice that comes from having witnesses who are very much affected by legislation. I know some concerns have been raised by that, but I can tell you very candidly and frankly that the committee was very direct and focused with respect to these particular elements of the legislation and thus having you in to engage the committee. I hope you have felt that the committee has given the consideration that your concerns warrant.

I thank the committee. I thank you, Minister, for being here and for the input you have given to the committee.

The committee will also have copies of your briefs sent to it again. The clerk has indicated to me, just so you're aware, that as we are going through clause-by-clause we will have references from your briefs on which we can engage our justice and associated ministries should questions arise.

Thank you very much, members of the committee. The meeting is adjourned.

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