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# **Standing Committee on Environment and Sustainable Development**

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**EVIDENCE**

**Thursday, March 26, 2009**

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**Chair**

**Mr. James Bezan**

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## Standing Committee on Environment and Sustainable Development

Thursday, March 26, 2009

•(0905)

[English]

**The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)):** We're going to start our study on Bill C-16. And as we always do with bills, we kick off with a briefing from departmental officials.

Joining us again from the Department of the Environment are Cynthia Wright, acting assistant deputy minister of the environmental stewardship branch; Albin Tremblay, chief enforcement officer; and Sarah Cosgrove, manager, legislative advice section. We also have Linda Tingley, senior counsel, Department of Justice. From Parks Canada we have Darlene Pearson, director, legislation and policy. Welcome, all.

We're going to kick off with a 15-minute presentation from Environment Canada.

Are you presenting on behalf of Environment Canada?

**Mrs. Cynthia Wright (Acting Assistant Deputy Minister, Environmental Stewardship Branch, Department of the Environment):** Yes, I am, Mr. Chair.

**The Chair:** We'll try to get through three rounds as fast as possible and then we have some business to deal with at the end of the meeting.

With that, please provide us with your presentation.

**Mrs. Cynthia Wright:** Thank you.

The enforcement bill, Bill C-16, would strengthen environmental enforcement to make polluters more accountable. The amendments are designed to contribute to the three main goals: deterrence of environmental offences, public denunciation of environmental offences, and restoration of environmental harm resulting from unlawful activity. These main goals are achieved through amendments to the fines schemes, to the sentencing provisions, and to the enforcement tools.

The bill proposes to amend six Environment Canada-administered statutes, including the Canadian Environmental Protection Act, or CEPA, and the Migratory Birds Convention Act. It also amends three Parks Canada-administered statutes, including the Canada National Parks Act.

The bill also introduces an entirely new statute, the Environmental Violations Administrative Monetary Penalties Act, which I will discuss towards the end of my presentation.

With respect to the fines, to best understand what the bill proposes, it is necessary to first summarize the existing fines

schemes under the statutes it amends. Currently, all offenders under these acts are liable to a maximum fine and/or maximum jail term. The highest current maximum fines are under CEPA, the Antarctic Environmental Protection Act, and the Migratory Birds Convention Act, at \$1 million on indictment or \$300,000 on summary conviction.

Other acts have lower maximum fines. For example, the International River Improvements Act currently provides for maximum fines of \$500 on summary conviction and \$5,000 on indictment.

Fines imposed by courts tend to be much lower than the maximum fines. The bill attempts to address this by introducing minimum fines for the most serious offences and increasing the maximum fines, by introducing higher fines for corporate offenders than for individual offenders, and by ensuring all statutes authorize the doubling of fines for second and subsequent offences.

This slide shows the fines scheme proposed by the bill. For the minimum fines for the most serious offences—by that term we mean those that are involved in direct harm or risk of harm to the environment or obstruction of authority—the proposed fines scheme includes different fines for individuals, corporations, and small-revenue corporations. These distinctions are meant to reflect the respective financial capacity of each type of offender and to ensure fines achieve their goals of deterrence and denunciation regardless of the wealth of the offender.

The proposed fines scheme also changes maximum fines from the existing high of \$1 million for all offenders to \$1 million for individuals, \$4 million for small-revenue corporations, and \$6 million for corporations. Finally, the proposed scheme provides double fine ranges for second and subsequent offenders.

Importantly, the bill authorizes the court to consider substantially similar offences under other federal or provincial environmental or wildlife laws when determining whether an offender is a second or subsequent offender.

The bill adds a provision to each statute directing that the fines collected under the statute are to be credited to the environmental damages fund to ensure they can contribute to environmental restoration goals. Currently, most funds are generally paid to the Receiver General, where they are not necessarily available for restoring environmental damage resulting from offences. The environmental damages fund, which was created in 1995, makes compensation received as a result of court awards, settlements, and voluntary payments available for rehabilitation or restoration projects. Money in the fund is to be used, where possible, for projects in the area where the harm occurred. It may also be used for research and education related to protecting and restoring the environment.

The bill adds a purpose clause to the sentencing provisions of the statutes it amends, which sets out the fundamental purposes of deterrence, denunciation, and restoration of the harmed environment. The bill also emphasizes the importance of accounting for aggravating factors when determining appropriate penalties. It adds to each statute the principle that the amount of the fine should be increased to account for every aggravating factor associated with the offence and reflect the gravity of each of those factors. It adds a list of specific aggravating factors that should be taken into account, including that the offence caused damage to the environment.

- (0910)

The bill ensures that when considering the gravity of aggravating factors, such as damage to the environment, the court takes into account damage to both use and non-uses of the environment. Use value and non-use values are terms of environmental economics. Their inclusion in these statutes will ensure that the full value of the environment is considered by sentencing judges.

Use values include the value derived from the direct use of the environment, such as the use of water for drinking, as well as the value derived from indirect use of the environment, such as the value of a healthy river for recreational fishing. It also includes option value, the value of the environment for a future use.

Non-use value includes the environment's existence value, the value received from knowing that a resource, a good, or a service exists, and its bequest value, the value received from ensuring that a resource, good, or service will be available to future generations.

The bill contributes to the objective of deterrence by increasing access to information about convictions. It introduces a requirement to each act for the minister to establish a publicly accessible registry of corporate convictions. This would be an Internet-based registry, housed on Environment Canada's enforcement website.

The bill also adds a provision to each statute obliging the court to order corporate offenders to notify their shareholders of the facts relating to a commission of offence and the details of the punishment imposed. This obligation is new to each statute. Previously, courts were authorized under some statutes to order offenders to publish the details of the conviction. The bill retains that discretionary authority, while at the same time adding this new mandatory order. The obligation recognizes the deterrent effect that public disclosure has on corporate behaviour. Contravention of such an order will be considered an offence for which the offenders are liable to the highest fine ranges.

Bill C-16 also proposes to add a provision to each statute, obliging the court to order an offender to pay an additional fine equal to an estimated value of any benefit, advantage, or property gained as a result of the commission of the offence. The bill also introduces explicit authority for the courts to suspend or cancel a licence, or other authorizations issued to offenders under the statute contravened, and for the courts to prohibit offenders from applying for a new licence or permit for an amount of time.

Most of the statutes amended by Bill C-16 already authorize the court to make a number of orders upon sentencing an offender. These range from ordering the offender to undertake restoration work to compensating the government for remedial work. As these provisions were added over time, the bill ensures that each statute has a comparable suite of authorities that are relevant to each one.

Bill C-16 makes amendments to the enforcement tool provisions in the statutes as well. It adds an authority for enforcement officers to issue compliance orders to several statutes. The compliance orders already exist under CEPA. By using them, enforcement officers can cause a person to cease an illegal activity or correct a contravention without having to seek an injunction or initiate a prosecution. Those formal court procedures involve specific steps and take time before remedies can be effected. As such, they're not ideal for addressing an offence that is causing or will cause immediate harm to the environment. However, a compliance order can be issued without delay. Persons who are issued a compliance order can apply to the chief review officer, an administrative decision-maker established under CEPA, to have the order reviewed. As such, fairness is ensured while enabling enforcement officers to have access to a speedy remedy for situations where immediate action is deemed necessary.

Bill C-16 further strengthens the enforcement tool by adding authority to several acts for the minister to designate analysts. Analysts are scientific or technical experts who may accompany enforcement officers to carry out specific inspection activities, including taking samples. They already operate under some statutes, including CEPA, and have been very useful. The bill also extends the limitation period on instituting proceedings by way of summary conviction from two to five years and changes the day on which this period begins, from the day on which the minister becomes aware of the offence to the day on which the offence occurs.

- (0915)

Finally, the bill also gives enforcement officers and analysts operating under each of the acts the same level of immunity from personal liability that is already afforded to marine safety officers, pollution response officers, and inspectors operating under the Canada Shipping Act, 2001. It ensures that enforcement officers and analysts can perform their duties in good faith, without fear of civil suits.

As I mentioned at the beginning of my presentation, the bill also creates the Environmental Violations Administrative Monetary Penalties Act. The new act would set out the necessary framework to establish a system of administrative monetary penalties that are applicable to other statutes. The administrative monetary penalties are modest financial penalties that are limited to \$5,000 for an individual and \$25,000 for a corporation and are meant to provide a quick and more efficient response to the less serious offences than prosecution provides.

Administrative monetary penalties may be imposed on persons or ships by enforcement officers who have reasonable grounds to believe that the person or ship has committed an offence. Persons or ships subject to an administrative monetary penalty may pay the penalty outright or contest it administratively. The bill authorizes the chief review officer appointed under CEPA to hear appeals of administrative monetary penalties.

This ends my formal presentation, but I'd like to draw the attention of committee members to two additional documents that we've provided. One is a general overview of the bill that shows the nature of the amendments, the statutes under which it applies, and the pages and clauses of those statutes. The second one is a table that summarizes through an easy overview all the amendments that are made, where they're made, and where they already exist in the statute.

Thank you.

**The Chair:** Thank you very much. We appreciate it.

Do any of the witnesses have anything to add?

We'll go to our first round.

For seven minutes, please, Mr. Trudeau.

**Mr. Justin Trudeau (Papineau, Lib.):** Thank you.

Thank you for your presentation.

I guess I'm curious, because there are two parts to environmental enforcements. Are these people going to court? Are we bringing them forward, and what are the consequence once we bring them forward?

This bill largely addresses sentencing, compliance, consequences, restitution, and those kinds of things. Are we making it any easier? How does this bill facilitate the actual arrest or the bringing of offenders before a court under this act?

**Mrs. Cynthia Wright:** I guess the first part of that to point out is on the compliance orders. This enables stopping the infraction right away.

The second point to remind members of, as I'm sure you will recall, is that additional enforcement officers have been hired. I think it's an important point.

I don't know if my colleague, Albin Tremblay, would like to add anything more on that.

• (0920)

[*Translation*]

**Mr. Albin Tremblay (Chief Enforcement Officer, Department of the Environment):** I might approach it differently, sir. I don't think it facilitates bringing people before the courts. It will, however, facilitate the work of the enforcement officers, who will be able to settle the less important cases more easily by means of administrative sanctions instead of having to go to court. They can therefore devote more time to the more important cases.

**Mr. Justin Trudeau:** Thank you.

In the past three years, how many times did people go to court for infractions of the law by various organizations, companies or individuals? How many sentences were given?

**Mr. Albin Tremblay:** I have the data here. In the past five years, there were 656 prosecutions, of which 479 cases culminated in convictions. In all, there were 502 sentences or convictions. The figures do not match because often, in the same prosecution, there may be two convictions, but that gives you an idea of the number of prosecutions that ended up before the courts in the past five years.

**Mr. Justin Trudeau:** I'm having a hard time putting that in context. You talk about 656 prosecutions in five years. Is that a lot? Or is it not a lot? Does that mean that only 600 people broke the law? It doesn't seem like very much to me.

**Mr. Albin Tremblay:** That doesn't mean there were only 656 cases. Lots of cases are settled before going to court, further to directives from our officers, settlements and warnings. It doesn't give any idea of the order of magnitude concerning the number of cases that were processed. These are simply the ones that resulted in prosecutions. I'd say that this is a small proportion of the total cases handled by enforcement officers in recent years.

**Mr. Justin Trudeau:** That's fine. Let's look at the figure of 656 cases for the past five years. Last year, was there exactly one-fifth of that total? Do you have annual figures?

**Mr. Albin Tremblay:** I don't have them available here, but we do have them. I could easily send them to you.

**Mr. Justin Trudeau:** I'd like to know how many a year, in order to know whether, since the change of government, there have been more or fewer cases brought before the courts.

[*English*]

Mr. Chairman, this question may be for Ms. Wright.

What kind of evidence has been gathered anecdotally or from other jurisdictions that bigger fines actually have consequences, that they change behaviours?

**Mrs. Cynthia Wright:** I can allow Ms. Cosgrove to elaborate, but there have been several studies to show that particularly when you indicate the maximum fine, you're indicating the severity of the offence and you're giving an example of society's intolerance for such offences. So there have been studies on that. The other thing we did to determine the actual fines was look at recently renewed legislation in other jurisdictions, including other provinces in Canada. So the \$6 million figure comes from the highest maximum fines in Canada, which are under the Government of Ontario.

Sarah, do you want to elaborate on any studies? If the chair is okay, we could elaborate a little bit on the studies that we do.

**Ms. Sarah Cosgrove (Manager, Legislative Advice Section, Department of the Environment):** We don't have the actual details, but we could provide those further.

There are several studies that have focused on corporations and shown that corporate behaviour specifically is affected by penalties. In addition, penalties are commonly known to be an effective deterrent and tool for denunciation at large, either with individuals or corporations.

• (0925)

**Mr. Justin Trudeau:** In regard to the slide on page 8 about use value and non-use value, do ecosystem services figure into one of those?

**Mrs. Cynthia Wright:** Yes, they do, and Environment Canada does have a database that will be useful for prosecutors to guide them on this kind of thing.

**Mr. Justin Trudeau:** Does it fall under use or non-use?

**Mrs. Cynthia Wright:** It's both, because it depends on whether it's just by virtue of its existence, or whether it's actually being used. So in some cases, like a wetland, it will be being used as a purification area.

**The Chair:** Thank you.

Monsieur Bigras.

[*Translation*]

**Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ):** Thank you, Mr. Chair. First of all, thank you for being here and thank you especially for the little document which you sent to us, "General Overview of Bill C-16." I think it will be really useful. There is no point in pretending, this bill is very technical, difficult and inaccessible for parliamentarians. I think that this overview will be particularly helpful during the clause-by-clause study of the bill.

I'd like to come back to the number of cases that Mr. Trudeau was talking about a little earlier, because this is important. Different information is going around, including some I obtained about the average number of charges and convictions since 2000.

Can you confirm to us that, since 2000, the average number of charges under the law is between 3 and 14? Is this possible?

**Mr. Albin Tremblay:** The information you're talking about relates solely to the Canadian Environmental Protection Act, or CEPA. The data that I have do not match that at all. This information had been provided for a technical session, but it dealt only with the application of CEPA. I can check and confirm this information, but it is definitely not going to match the data for the set of statutes affected by this new bill.

**Mr. Bernard Bigras:** Okay. But this bill also affects CEPA. Is the information accurate that claims there have been only 1 to 5 convictions a year on average in connection with CEPA since 2000?

**Mr. Albin Tremblay:** I will have to get back to you, but it's possible.

**Mr. Bernard Bigras:** Is CEPA the most important statute? Is it an important act with respect to convictions and charges?

**Mr. Albin Tremblay:** No, according to the data that I have, the most important acts as far as charges are concerned are the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act and the Migratory Birds Convention Act, 1994. Of the 502 cases I mentioned awhile ago, 136 are related to the first act, 246 to the second one, and 81 to CEPA. That may give you an idea. The other two account for the larger share of the volume.

**Mr. Bernard Bigras:** What is the maximum fine currently for the big industrial polluters?

[*English*]

**Mrs. Cynthia Wright:** It's one million dollars under CEPA .

[*Translation*]

**Mr. Bernard Bigras:** You're proposing that it be raised to \$6 million. In the past 20 years, how often has the maximum fine of \$1 million been imposed?

**Mrs. Cynthia Wright:** It has never been imposed. The biggest fine ever collected was \$100,000.

**Mr. Bernard Bigras:** The maximum fine for the big industrial polluters has never been enforced. How can you convince us today that, under this Bill C-16, the maximum fine will be enforced? I understand that it is being raised from \$1 million to \$6 million dollars, but if the maximum fine has not been imposed, how can we, by increasing the fine to \$6 million, assume that the principle of the polluter pays will be enforced.

[*English*]

**Mrs. Cynthia Wright:** I think the point to make on this, Mr. Chair, is that when courts see a maximum, that's giving them a guidepost; it's giving them an indicator. At the same time, they're now going to see a minimum for the most serious offences, which is going to give them another guidepost.

It's a large range, and of course the courts will continue to use their discretion. But if you combine that with some of the other factors in the law, particularly the guidance on aggravating factors and on fines where a similar offence has occurred under another piece of legislation, that's going to give courts other guideposts. Whether that takes them to the maximum will remain to be seen.

• (0930)

[*Translation*]

**Mr. Bernard Bigras:** The bill includes quite an important aspect pertaining to determination of the penalty. You outline four or five factors to be applied in order to determine the penalty, including one that bothers me a bit. Among the aggravating circumstances to be taken into account in determining the penalty, you identify the offender's failure to take reasonable care to prevent the offence despite—and this is what bothers me—having the financial means to do so.

Why add this element? I want to be sure that it doesn't mean that an offender can receive clemency from the court because he had the financial means to take reasonable action to prevent the offence. Wouldn't this basically be a loophole? We want the law to apply to everyone.

[English]

**Mrs. Cynthia Wright:** There are a couple of points to make on that. One of the things the bill recognizes is that individuals, small corporations, and corporations have different means, and it's trying to balance the means to pay a fine with the actual fine.

But before that, it's trying to give the signal that it will be treated seriously. Many of the studies indicate that because we have such low fines, many corporations are treating fines as the cost of doing business. The bill is attempting to ensure that environmental pollution has a severe enough fine that the cost of doing business should be to prevent that pollution.

[Translation]

**Mr. Bernard Bigras:** Page 11 of your presentation is titled "Enforcement Tools, Compliance Orders." As a parliamentarian, the word "may" always scares me. It says that "These may be imposed on any person who causes or contributes to the contravention and may require them to: [...]." It also says that "Persons receiving a compliance order may apply to the Chief Review Officer for a review of the order [...]." Isn't this once again the good old method whereby the use of the word "may," rather than "must," means that the law is enforced if it is deemed appropriate.

[English]

**Mrs. Cynthia Wright:** I have a couple of points to make on this. We have policies on each of our statutes that demonstrate how we use our authorities. The other thing that is important to remember is that to ensure fairness, a chief review officer will act as the mechanism for any disputes.

**The Chair:** Madam Duncan.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Thank you, Mr. Chairman.

I have a question for Cynthia Wright. I had the opportunity of looking at the recommendations from the 1998 Standing Committee on Environment and Sustainable Development. That committee and a number of other people recommended that all the information related to evidence of violations, together with any enforcement response, be made publicly available and be tabled with Parliament. I'm wondering why it's been decided to inform the public only of convictions—information that is already available through the courts. This seems needlessly narrow.

**Mrs. Cynthia Wright:** Could you elaborate on what kind of thinking went into where we went, Sarah?

**Ms. Sarah Cosgrove:** The bill requires that corporate conviction data be made available on our registry. We found that it's actually not as easy as one would hope to find these records. It depends on where the decisions are located. There are provincial courts across the country.

**Ms. Linda Duncan:** I understand why you're doing that. I'm wondering why you didn't reveal all the other information.

● (0935)

**Ms. Sarah Cosgrove:** The other information having to do with the status of investigations...?

**Ms. Linda Duncan:** I'm talking about warnings, orders, administrative penalties.

**Mrs. Cynthia Wright:** Those things are summarized in our annual report. There are statistics on the number of investigations, the number of warnings, the number of environmental clients, and alternative measures. And there is other information at a summary level.

**Ms. Linda Duncan:** Why only at a summary level? I understand that British Columbia for quite some time has publicly revealed to people who exactly has been given a warning, charged, issued an administrative order, and so on. Why are we not making that information public?

**Mrs. Cynthia Wright:** Sometimes we do name them for a warning, although we haven't proposed that in this bill.

**Ms. Linda Duncan:** I'm not sure if the Department of Justice or Environment Canada would answer this, but I'm wondering about the reason for the decision to remove the power and discretion of the judge, on conviction, to direct that the convicted party pay moneys to an impacted community, an NGO, or any other party. Why is the discretion of the judge now being fettered and made a political decision, with respect to who should be compensated and who shouldn't?

**Mrs. Cynthia Wright:** The purpose of using the environmental damages fund is to address the issue of restoration or damage. Both CEPA and the Migratory Birds Convention Act have allowed for that, but there's been a lack of awareness. It is used about 15 to 20 times a year, roughly \$200,000 to \$300,000 a year. The purpose of this bill is to combine deterrence and denunciation with restoration. That is why it's directing the funds to the environmental damages fund.

**Ms. Linda Duncan:** I'm very supportive of the establishment of the fund, but that does not answer my question. My question is, why is the decision being taken away from the judge? I was delighted to discover that the Ontario region of Environment Canada was on its own in compiling lists of people who could do good work if the judge directed that the convicted party pay funds to them or to compensate the community. This bill is removing the power of the court to do that. Instead, it is telling the judge that he can refer the matter to a minister, who can decide if he thinks somebody deserves to be paid.

**Ms. Sarah Cosgrove:** The reason the staff compile those lists, and all regions do, is that often the judge is not prescribing. We want to be ready to have a group of individuals or organizations who can use the funds. The purpose of not specifically directing it—although if I'm not mistaken the courts can still recommend funds to an individual organization—is to ensure that we have flexibility. We have some areas in which we don't have an organization ready. Our objective is to work twofold: to encourage the restoration to happen as close as possible, and to be ready with a list of possible organizations and expertise.

**Ms. Linda Duncan:** Thank you. I fully understand that, and I think it was a great move several years ago by the Ontario region to do that. But that is different from taking away the power of the judges to make that decision. Indeed, the investigators and prosecutors can recommend names, but now the judge doesn't have that power.

This omnibus bill does an incredible job of thirty-years-overdue provisions, expanding the powers and mechanisms for effective enforcement, and I commend the Department of Justice, Environment Canada, and Parks Canada for moving forward with these amendments. At the same time, I'm wondering why you did not also take measures as recommended in 1998 by the parliamentary committee. An additional one of those recommendations was to bring forward into all the environmental statutes the same provision that's in the federal Fisheries Act. I think it's also in the Migratory Birds Convention Act. That provision is that where there's a private prosecution, the party bringing the private prosecution has a right to half of any fine imposed. Why was that provision not brought forward, as was recommended by the parliamentary committee?

**The Chair:** This is a policy discussion. You've got to remember that the act comes from the Minister of the Environment, who takes this through into policies developed by cabinet. I don't want to put our public servants, as laid out in chapter 20 of Marleau and Montpetit, in a position where they're trying to interpret the policy discussions that might have taken place at cabinet and betray that confidentiality and their ability to provide expert advice to cabinet.

I just have to instruct you, Ms. Duncan, that we have to be careful in these situations with public servants. In no way do I expect the witnesses to feel they're obliged to answer any of those types of questions.

Respond as you see fit.

● (0940)

**Mrs. Cynthia Wright:** I think the government does support the strong public participation agreements, and that issue is still under study.

**Ms. Linda Duncan:** Okay. Thank you.

I'm wondering if you could explain, Mrs. Wright, why this time around, when all these amendments were tabled—particularly for the Canadian Environmental Protection Act—why no updated, revised enforcement compliance policy was tabled, which happened when the first CEPA was first tabled in Parliament. This would have given us an idea of how the department is planning to use this new array of tools and provide clarity for the people who are going to be regulated.

**Mrs. Cynthia Wright:** Our first effort is to focus on developing the bill and supporting the committee in understanding the bill. We do, as I said, update our policies on compliance enforcement. We will do that should Bill C-16 be passed.

**Ms. Linda Duncan:** Is revising the enforcement compliance policy in process now?

**Mrs. Cynthia Wright:** We've just finished this work, so I think we'll turn to it, as it looks as if this bill will move forward. We usually wait until a bill is passed before publicly revising our policies and directives.

**Ms. Linda Duncan:** So no criteria will be available. This bill, I'm anticipating, is going to be enacted fairly quickly, we've agreed to that. So there won't be any known public strategy on how you're going to use, for example, these new provisions under this new statute you've enacted.

**Mrs. Cynthia Wright:** We have some guidance in terms of our intent behind putting in these provisions. For instance, the intent of having the administrative monetary penalties is for simple offences such as filing a report at a late date. Those kinds of simple procedures, as my colleague said, can be dealt with efficiently to allow staff to focus on more serious matters.

**The Chair:** Just to follow up on that, you've got to remember as well that civil servants aren't there to predict what Parliament is going to do until the bill becomes law.

**Ms. Linda Duncan:** Usually the policy is in place as soon as the statute's enacted.

**The Chair:** We've always got to remember that there's a process, and we have to respect that process. That includes getting bills passed first.

With that, Mr. Woodworth will finish off the seven-minute round for us.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much.

I want to begin by following up on one of Ms. Duncan's questions about not publicizing warnings, for example. I have the general notion that a warning should be given at a very low threshold of evidence where there might be potential damage or where there might be issues arising, but where perhaps the full due process of investigation and evidentiary principles in court hasn't applied. Am I right about that?



[Translation]

**Mr. Albin Tremblay:** Warnings result from a complete investigation, a complete process, but it is more the nature of the offence that leads us to determine whether a warning is more appropriate than a more severe measure. Among our enforcement policies, one relates to CEPA, another one to the Fisheries Act and yet another one to legislation respecting wildlife. The process is clearly explained. There is a range of tools available to us. The warning is really the lowest level. There may be minor offences, first offences or bona fide cases. It's a matter of judgement, which has to be applied to each case.

[English]

**Mr. Stephen Woodworth:** Sure. I guess the point I was driving at is that I would be a little uncomfortable if in fact people's names were being published in circumstances where they didn't have the due process of a trial to defend themselves. Does that sound like a reasonable principle to you?

[Translation]

**Mr. Albin Tremblay:** I can't say too much without being afraid of saying the wrong thing. I can find out whether it's a reason why we don't do it, but I don't think that that is the main reason why we don't do it, for the time being.

[English]

**Mr. Stephen Woodworth:** I'd like to switch gears a little bit and just ask you about the department's resources. To coin a phrase, it's sort of the elephant in the room. We can have whatever laws we want on the books, but if we don't have feet on the ground, we still won't have an effective system.

I understand that budget 2007 allocated some \$22 million over two years to increase the number of environmental enforcement officers. I wonder if you could give us some details about what the numbers were previously, what they are now, and what stage the augmented enforcement capability is at.

● (0945)

[Translation]

**Mr. Albin Tremblay:** Actually, the resources allocated in the 2007 budget provide for a 50% increase in the number of enforcement officers in the country. In actual figures, that means 106 new enforcement officers in Canada, who are assigned to the various Environment Canada regions. What must be borne in mind is that this is a 50% increase over what we had, and this is really significant and very important.

At present, 80 new officers have already been hired and are already at work in the field. A training session for our new wildlife enforcement officers was just completed in early March. A final training session for our officers working in environment will begin in May and end in early June. At that time there will be a total of 106 new officers operating across the country.

This also enable us to open new offices in locations or sectors where there weren't any up to now, including Ontario, British Columbia and Quebec. This enables us to make a significant increase in our intervention and enforcement capacity in Canada, compared to our earlier capacity.

[English]

**Mr. Stephen Woodworth:** That's excellent news; that's good news. I think it's an important piece of what we're doing here today in trying to beef up enforcement measures.

I want to also ask you about what I understand was a further \$66-million allocation over five years for enhancing enforcement. I suppose that in addition to enforcement officers, if there is to be an increase in compliance efforts, there will need to be analysts and laboratory resources.

I don't know whether you came here today prepared to talk about those details, so I'll understand if you can't. Are you able to give us some detail on how that will play out? What will be the allocation of those funds?

**Mrs. Cynthia Wright:** Budget 2008 resources are complementary to the enforcement officers on the ground. They are enabling laboratory support, data collection analysis, the management systems to manage that information, as well as the management systems to track compliance rates, which will actually make us more efficient in terms of where we target our enforcement activity. This also allows us some resources to make sure that the judiciary is more aware of the kinds of offences, the impacts on the environment, and the kinds of offences that we think will happen.

So it's proactive information. There are also additional resources for Parks Canada for enforcement.

**Mr. Stephen Woodworth:** Very good.

There's another point that I'd like to try to make absolutely crystal clear in my own mind and also for the committee. That's how this bill interrelates with the Species at Risk Act.

Do I understand correctly that the major reason, at least, that the bill does not deal with the Species at Risk Act is simply as a matter of deference to the committee's review, not wanting to second-guess what the committee might come up with?

**Mrs. Cynthia Wright:** That is correct.

**Mr. Stephen Woodworth:** So if the committee, in its study of the Species at Risk Act, determined that these measures would be suitable for that act as well, from the department's point of view, would that be a manageable approach? Would there be an equivalent set of drafting that could be done for the Species at Risk Act?

● (0950)

**Mrs. Cynthia Wright:** You're recommending another law.

**The Chair:** We are studying species at risk, so it's not on topic. We're trying to talk about Bill C-16 right now.

**Mr. Stephen Woodworth:** Mr. Chair, we are doing a SARA review, so it is relevant information to SARA.

**Ms. Linda Duncan:** I think it's a good question.

**Mr. Stephen Woodworth:** I can rephrase it, I suppose, to make it more relevant.

Is there any objection, in principle, as to why this bill might not, in principle, also cover the Species at Risk Act?

**Mrs. Cynthia Wright:** We did analyze the Species at Risk Act for these provisions. According to our analysis, it's like the other provisions. Sometimes there's an element there, but it's not necessarily consistent and as modern as Bill C-16.

**The Chair:** Your time has expired. Thank you, Mr. Woodworth.

This is something the committee will deal with, instead of putting our public servants into those difficult situations.

Mr. Scarpaleggia, could you kick us off for the five-minute round?

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Sure.

It's nice to see you again, Ms. Wright. We're seeing a lot of you these days. You almost might as well join the committee at this stage. Obviously, you come well prepared.

What is the International River Improvements Act?

**Mrs. Cynthia Wright:** That's the oldest of the suite of statutes that's being revised. It's from 1955, and it was created to allow for a government decision about constructing any dam or diversion that would affect the flow of an international river. It sets out a process for regulating, permitting, and essentially constructing things like dams and diversions that would have a significant effect on the water flow.

**Mr. Francis Scarpaleggia:** In this case, an inspector's role would be to supervise the construction of the dam, canal, or whatever?

**Mrs. Cynthia Wright:** It would be more in the operation of such a dam—

**Mr. Francis Scarpaleggia:** Oh, it would be in the operations, to make sure.

**Mrs. Cynthia Wright:** —because the permit restricts what changes they can make to the flow on a seasonal basis and that sort of thing.

**Mr. Francis Scarpaleggia:** Okay. Maybe this isn't a fair question. DFO, of course, must have many inspectors, and this bill doesn't deal with DFO. I know this may be a very odd question to ask you, but is it because the inspection provisions under the Fisheries Act are satisfactory? Or have you heard that maybe that department will be proceeding with the same kinds of changes?

**Mrs. Cynthia Wright:** This bill is just dealing with statutes under the power of the Minister of Environment and parks.

**Mr. Francis Scarpaleggia:** Okay. We'll leave it at that.

What about CEPA now? At one point, a politician or member of Parliament suggested that we use CEPA to attack the problem of cities that don't have secondary or tertiary treatment of sewage. Are those cities actually breaking the law, and if so, why are we not enforcing the law? Can you enlighten us on that?

**Mrs. Cynthia Wright:** I think it's actually the Fisheries Act, Mr. Chair. The fisheries minister has committed to developing a regulation that would set a certain standard of treatment for all discharges of municipal waste water into fish-bearing waters. It's going to be guided by the Canada-wide strategy that was just agreed to in the middle of February by all federal-provincial ministers of the environment.

**Mr. Francis Scarpaleggia:** So there wouldn't be a hook for CEPA?

**Mrs. Cynthia Wright:** There are some elements of CEPA, and we are currently using some guideline provisions for CEPA for ammonia discharges. We also have a pollution prevention plan for reducing chlorinated effluent discharges. We are using CEPA, and we will continue to use CEPA under the chemical management plan to actually prevent things from even being entered into municipal waste or even pre-treatment.

**Mr. Francis Scarpaleggia:** Going back to when you appeared on the oil sands study, we talked about monitoring the Athabasca for signs of pollution. That would be a fisheries issue, I guess?

● (0955)

**Mrs. Cynthia Wright:** Yes, that is a fisheries issue.

**Mr. Francis Scarpaleggia:** This is a bit off topic, I suppose. I'm just raising this by way of analogy.

A little while ago I asked the Department of Health about inspectors at the Canadian Food Inspection Agency. The question was on how many inspectors were available in February 2005, 2006, 2007, and 2008 to inspect water-bottling plants. In response to part of that question, the answer I got was:

The CFIA does not have an information system that can identify the specific job duties of inspectors in the past. Although the CFIA does have information regarding the total number of inspectors for each time period, an inspector's individual duties are dependent upon program requirements and health risk assessments. These duties change and are not tracked under our current systems.

Is that the same for inspectors who work under Environment Canada? I guess what they're saying is that they know how many inspectors they have, but they're not really tracking what they've done. If there's a problem, the inspectors will alert the agency, but their role or their tasks are so variable, the agency doesn't keep track. This strikes me as odd, but maybe it makes sense. I don't know.

Would that be true for Environment Canada inspectors as well?

[Translation]

**Mr. Albin Tremblay:** We can definitely distinguish between the officers working in wildlife and those working in pollution. That's very easy for us to do.

Your question has more to do with the environmental problems or ones linked to pollution. Right now, it is in fact very difficult for us to tell you exactly how much time, in all, our officers have invested in connection with the Fisheries Act compared to the Canadian Environmental Protection Act or certain regulations pertaining to this statute. However, our organization is setting up a procedure so that we will have a much more accurate idea of the time actually spent by all our officers with respect to the various regulations and different statutes. This should be put in place quite quickly.

**The Chair:** Thank you very much.

Welcome, Mr. Ouellet.

**Mr. Christian Ouellet (Brome—Missisquoi, BQ):** Thank you very much for coming to enlighten us. Indeed, this is not an easy bill.

[English]

**The Chair:** I screwed up on the rotation. I apologize.

I have Mr. Calkins first, and then Monsieur Ouellet. We'll come right back to you.

**Mr. Blaine Calkins (Wetaskiwin, CPC):** Thank you, Mr. Chair.

I just want Mr. Ouellet to know that it wasn't me who raised the point of order, but I do appreciate your patience.

Thank you very much to our witnesses.

The tack I'm going to take on this is the administrative monetary penalties act.

I spent several years in conservation law enforcement. I was a national park warden. At the federal level, of course, if I found some person with an illegal fish—or whatever the case may have been—if he didn't have a licence I had no recourse but to issue a summons and start a court proceeding.

When I was a conservation officer for the Province of Alberta, I could issue a summons or a violation ticket, depending on what it was. If the person chose to pay it, court proceedings wouldn't be initiated, but if they chose to plead not guilty, that would then initiate the court proceedings. So we could deal with a lot of these things in a more administrative manner. The difference, though, is that it would start a court proceeding. It would get before a judge if the accused chose to challenge a violation ticket.

Can you outline for this committee what the difference would be in the creation of this proposed new act? What powers, for example, would this review person have? What would the judicial nature of the process be, and what options would somebody charged with an administrative monetary penalty have in making sure he was given due process of the law?

**Mrs. Cynthia Wright:** I'll start, and maybe Sarah would want to add.

They are purely monetary penalties; in other words, they don't have the possibility of a jail sentence or amount to a conviction or lead to a criminal record. They are intended to address violations of the least amount of stigma, if you will, and that's why they will be used for the lowest-level types of offences. I gave the example of a late filing of a report, that kind of thing.

The bill does lay out some procedures that will apply, and it also does enable the offender to go to the chief review officer, which is already a position that exists. A person is in that job, established under the CEPA, and that person will be the administrative tribunal, if you will, for any disputes over the penalty.

Is there anything you want to add?

• (1000)

**Ms. Sarah Cosgrove:** Sure. I guess to start, the distinction with the ticketing regime, which also exists in federal statutes, is that these are purely administrative penalties.

**Mr. Blaine Calkins:** Simply administrative...?

**Ms. Sarah Cosgrove:** There's no stigma; there's no conviction associated with those. So the due process that we're proposing to put in place is tailored to that level of lower stigma. The chief review officer would have the ability to determine whether the violation took place and alter the penalty according to what we would develop in regulations.

**Mr. Blaine Calkins:** Very good.

Keeping on the tack with national parks, when I was a warden—I was a back country warden—I was by myself for 15 days, working on the north boundary of Jasper National Park. In the fall, of course, bighorn sheep hunting would start. Of course it's a very interesting and lucrative hunt for the guides and so on who are out there.

As an officer, I was equipped with fairly meagre resources insofar as defending myself, shall I say, whereas a hunter usually came fully able to do what they needed to do for their activities.

At the time, I remember thinking to myself that the maximum penalty for poaching of bighorn sheep, I believe, if you look at the schedule at the time, was \$130,000. It might be \$150,000 now. That's going to \$1 million.

Maybe, Ms. Pearson, you would be the person I'm directing my question to. What assurances can we give to front-line enforcement officers who may be in a position where they're about to apprehend somebody who is facing a maximum penalty of \$1 million? What assurances can we give to those front-line enforcement officers who are doing that, when the person they might be apprehending will be making a judgment call as to whether or not they want to pay that \$1 million, or face that possibility?

**Mrs. Darlene Pearson (Director, Legislation and Policy, Parks Canada Agency):** Thank you for your question.

In a parallel process to this enforcement bill, which deals strictly with legislation, Parks Canada has been responding to direction from the Canada Labour Code, part II, to arm enforcement officers. We have received additional funds through Treasury Board so that—

**Mr. Blaine Calkins:** I was armed, Ms. Pearson. I'm just—

**Mrs. Darlene Pearson:** Well, this is actually now issuing sidearms. We're in the process right now of going through the acquisition of sidearms, of training up to 100 enforcement officers—

**Mr. Blaine Calkins:** That's my point.

**Mrs. Darlene Pearson:** —and that will, I think, give those front-line people the safety you were talking about.

**The Chair:** Your time is up, Mr. Calkins.

**Mr. Blaine Calkins:** Thank you, Mr. Chair.

**The Chair:** Back to Monsieur Ouellet.

[Translation]

**Mr. Christian Ouellet:** Thank you, Mr. Chair.

My question is for Ms. Wright. Awhile ago, you said that the fines had risen from \$1 million to \$5 or \$6 million. What expertise or what example was used to establish these increases? Why was it not decided to set them at \$10 million from now on?

[English]

**Mrs. Cynthia Wright:** As I indicated, we were guided by other jurisdictions, and particularly in a North American context, but there is some academic literature on what are deterring factors for avoiding offences.

[Translation]

**Mr. Christian Ouellet:** A number of European countries are prescribing prison terms for environmental offences. If you looked at what was taking place elsewhere, why did this not influence you?

[English]

**Mrs. Cynthia Wright:** Well, the laws do still have prison terms.

We did look at our prison terms relative to other jurisdictions as well. The reason we focused on the North American context is largely due to the perception that low fines give a business advantage. We were looking to neutralize any perception of a real business advantage with our major competitors.

• (1005)

[Translation]

**Mr. Christian Ouellet:** Mr. Tremblay, you said awhile back that the majority of cases never end up in court. Does that imply that there is a mediation system, or do the enforcement officers simply decide not to prosecute?

**Mr. Albin Tremblay:** It depends on the policies being enforced, and these are very well defined. They enable us to include different criteria in the factors considered to reach such decisions. Our officers are trained to make such decisions. The Attorney General of Canada must also make decisions on some cases submitted to him and determine whether we should prosecute or not. These decisions by the Department of Justice are not the responsibility of our officers.

A good many of the decisions are made by enforcement officers throughout the country, according to the nature of the case and various factors, like incentives not to commit such offences, the seriousness of the offence, whether it is a first or second offence, and so on. A series of criteria helps us to select the best tool to achieve the objective, that is, to end the activity or to take steps so that the event does not happen again in the future.

**Mr. Christian Ouellet:** So there is no mediation system per se, as there is in other sectors?

**Mr. Albin Tremblay:** No. It is up to the enforcement officers to determine the best tool to use.

**Mr. Christian Ouellet:** You go directly to court.

**Mr. Albin Tremblay:** We decide to go to court or else we use other tools before deciding to go to court.

**Mr. Christian Ouellet:** Do you think that this will have an effect on the denunciation of environmental offences? If the penalties are being increased, it is because we want cases to go to court, but often court appearances only occur two or three years after the offence.

Do you think that the increase in penalties will help reduce offences?

**Mr. Albin Tremblay:** Ms. Wright has already answered this question. Studies do indeed show that bigger fines act as a deterrent to committing such offences.

Many very important cases are resolved more easily and more quickly, thanks to directives, whether ministerial orders or other measures, which eliminate the need for court appearances. In most cases, we get the result desired, namely to end the offence or to avoid its happening again, without having to go to court. There are tools other than prosecution to enable us to achieve our objectives.

**Mr. Christian Ouellet:** How will people be made aware of the high fines? I don't know any better than you how much I would be fined if I committed an offence with my credit card, or what fine or prison term I would get if I did a robbery.

What makes you think that increasing the fines will change people's attitudes?

[English]

**Mrs. Cynthia Wright:** One of the things we do after any new legislation is passed and it has gone through the full process is compliance promotion. I do think that the corporations and individuals operating under our legislation, particularly those corporations and individuals who get annual permits for hunting, are well aware of the current fines.

Before the law passes we will make every effort to make sure they're aware of the augmentation of fines. There's that period of time between royal assent and proclamation, and we will do active compliance promotion in that period of time.

**The Chair:** Merci.

Mr. Braid, you have the floor.

**Mr. Peter Braid (Kitchener—Waterloo, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses for appearing and for your excellent work on this very important piece of legislation.

Out of curiosity, have you received any feedback from the corporate sector with respect to this proposed legislation, informally, formally, or anecdotally?

**Mrs. Cynthia Wright:** We haven't consulted on this piece of legislation. There have been other consultations as we've looked at how effective our legislation is, but there has been no specific consultation on this bill.

• (1010)

**Mr. Peter Braid:** Okay, thank you.

Moving on to the environmental damages fund, I believe you indicated in your presentation that it was first created in 1995. Could you start by giving us a couple of examples of how that fund has been used in the past.

**Mrs. Cynthia Wright:** If I may provide a very recent example, the J.D. Irving company was found to be guilty of destroying a large nesting area for herons in the Atlantic region, where it was operating. The court did direct payment to the environmental damages fund so that Bird Studies Canada could do some specific research.

Most of the time, with the environmental damages fund, the courts are indicating where they want the resources to be spent, and they are directing it to where the harm occurred. They often aren't quite as prescriptive as they were in the Irving case, where they indicated the money should go for research, but most are indicating there be some general restoration of the damage related to the harm. That's why, across the country, we have databases that give us ready access to the groups who can do that restoration work.

**Mr. Peter Braid:** Who manages the fund?

**Mrs. Cynthia Wright:** Environment Canada manages the fund. There are other statutes not under Environment Canada's authority, to which fund payments can also be made. So we coordinate with other departments, notably Transport Canada, and some others.

**Mr. Peter Braid:** It would seem logical under this bill, with the increased fines and the new mechanism for administrative monetary penalties, that the fund will grow or increase. Have you given any thought to what additional resources and management structure you may need to appropriately manage the fund?

**Mrs. Cynthia Wright:** Yes. Budget 2008 already gives additional resources for managing the fund. The fund is managed in cooperation with other community-based funds, so we are as efficient as possible. Environment Canada has other community-based funds, such as ecoACTION, and it's the same people who do that work. So our overhead expenses, if you will, for managing the fund are minimal. But we did get additional resources to support us in 2008.

**Mr. Peter Braid:** Excellent.

Changing tack, if I still have a moment, regarding the mechanism to notify shareholders of environmental infractions, or damages in this case, has any thought been given to the timeframe in which and the mechanism through which shareholders will be notified?

**Mrs. Cynthia Wright:** I'll let Sarah answer that, because I'm not sure if we have that detail yet.

**Ms. Sarah Cosgrove:** That detail isn't included in the bill. That could be part of the discussion or the cases submitted by prosecution staff. And the discretion would be with the judge, if that were to be specified.

**Mr. Peter Braid:** Okay, very good.

Lastly, perhaps this is a legal question, but could you help me understand the different scenarios where a summary conviction would be applied and where an indictment would be applied?

**Mrs. Cynthia Wright:** I think it would probably be best for Linda to give some guidance on that.

**Mrs. Linda Tingley (Senior Counsel, Department of Justice):** An indictable offence is a more serious offence. There is a specific

procedure for that set out under the Criminal Code, which a prosecutor and the judge would follow if an information or a charge were laid; that is, if the crown elected to go by indictment. In some cases, the crown can elect to go by indictment; in other cases, an offence is an indictable offence. Our offences are mainly hybrid offences, meaning that the crown prosecutor elects whether or not they want to proceed either by way of indictment or summary conviction.

I think the determination is generally made on the basis of the penalty, because the penalties for indictable offences, as you can see in the act, are much higher than they are for summary conviction offences.

The other difference would be the limitation period. For summary conviction offences, there's currently, in most of our legislation, a two-year limitation period in which an information or charge can be laid and the prosecution proceed. Under the Criminal Code, it's six months; in our legislation, it's generally two years. And under the bill, we're proposing to increase it to a five-year period from the time the subject matter of the offence comes to the attention of departmental officials.

I hope that's an adequate response to your question.

•(1015)

**Mr. Peter Braid:** It's very helpful. Thank you.

Thank you, Mr. Chair.

**The Chair:** Thank you.

Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you very much, Mr. Chair.

Thank you again to our witnesses for appearing.

I have a question about the environmental damages fund. You're directing that all fines be paid to the EDF. The question is, who gets those funds? And by that I'm sort of asking whether these funds will be applied to the remediation of the specific offence, or is that left up to courts to decide to impose restitution? I want to get to the nature of what the EDF will be used for.

**Mrs. Cynthia Wright:** It is an account that Environment Canada has access to, and the bill still allows the court to make a recommendation. Currently, where they have full discretion, sometimes the court doesn't indicate at all, so Environment Canada officials will look at the nature of the harm that was done and decide if it's something that's of a general nature. We do have proposals submitted to us for the environmental damages fund, and we might select a proposal that's relevant to the nature of the harm.

Sometimes where there's actual damage done, we will look for someone to do a very specific work, restoration of nests or cleanup work. So it's a bit variable, but it is a fund essentially managed by Environment Canada.

**Mr. Jeff Watson:** Okay. So do I understand correctly that the fund can actually be applied to the specific remediation of the offence that was committed?

**Mrs. Cynthia Wright:** Correct.

**Mr. Jeff Watson:** Okay. That's what I wanted to be clear about. I'm not sure I see an advantage to paying into a fund that may plant trees somewhere else. Although there may be advantage to that, it may not actually remediate. I wanted to get at who was actually going to pay for the remediation. So it is the particular offender, through the fine through this particular fund, who will remediate. So the polluter is paying, in other words, is what I'm....

**Mrs. Cynthia Wright:** In the case where there is actual harm. Sometimes it might be an exceedance of a bag limit or something like that, in which case there's....

**Mr. Jeff Watson:** Okay.

I want to probe maximum penalties, because I'm not sure I understand this very clearly, and you can forgive me if my knowledge is not very good on this. So let's say, for example, a maximum penalty for an individual is at \$1 million. Does that maximum include the aggravating factors, penalties for subsequent offences? I'm trying to find out whether the maximum \$1 million is actually the maximum that will be paid out by a particular individual. Or do they determine that the offence is worth \$750,000, with aggravating factors it's \$1 million, but because it's a subsequent offence, now it's \$2 million? Is \$1 million truly the maximum, including all those factors?

**Mrs. Cynthia Wright:** I think the member is demonstrating an understanding of it. When there is a subsequent offence it could be doubled. So the \$1 million is a first-time offence, but the bill would allow a doubling of the offence, so you could exceed the \$1 million.

**Mr. Jeff Watson:** Does that maximum include the aggravating factors, or could the aggravating factors exceed the \$1 million?

**Mrs. Cynthia Wright:** If it was a first-time offence, then the aggravating factors would be included within the \$1 million.

**Mr. Jeff Watson:** They would be included in the \$1 million. Okay, that's what I wanted to address.

On the administrative monetary penalties, you gave only one example of what that may include, a late filing of a report. Are there other examples where AMPs may apply?

**Mrs. Cynthia Wright:** Another example under the wildlife legislation would be minor exceedance of a bag limit for a migratory bird hunting permit, that sort of thing.

**Mr. Jeff Watson:** Okay. But this will have nothing to do with actual environmental offences on the ground? Those are simply requirements to keep up with certain statutes on a purely administrative basis.

**Mrs. Cynthia Wright:** Correct. The bill is indicating that where there's serious harm, then the administrative penalties would not be appropriate.

**Mr. Jeff Watson:** Are there any other federal statutes where AMPs have been used?

**Mrs. Cynthia Wright:** Yes, we have a number of those. Under other departments, there is the Agriculture and Agri-Food Administrative Monetary Penalties Act, which covers the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizer Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act, and the Seeds Act.

• (1020)

**Mr. Jeff Watson:** Okay. Can you give an example of an offence that would attract a minimum fine, sort of going back to the stream on fines?

**Mrs. Cynthia Wright:** Do you mean a fine, but not the administrative penalty?

**Mr. Jeff Watson:** That's correct.

**Ms. Sarah Cosgrove:** A specific list has been developed, and it's in the statute. They are offences that cause direct harm to the environment, offences that could cause direct harm to the environment, or offences involving an obstruction of authority, such as an obstruction of enforcement officers. An example would be a spill directly into the environment or the harming of a species.

**The Chair:** Your time has expired, Mr. Watson.

We're not too bad on time, so we're going to do a third round. We'll wrap up the second round and then we'll go for a third. We're going to really stick to the five minutes on the third one.

Go ahead, Mr. Warawa.

**Mr. Mark Warawa (Langley, CPC):** Before the clock starts ticking, I have a point of order.

I had talked to Ms. Duncan and I was going to give her my time so that we would be ending at this point. You're suggesting that—

**The Chair:** I suggest we do one more round, because I think we can do the business of the steering committee in about 10 or 15 minutes.

**Mr. Mark Warawa:** Then she'll have a second chance.

**The Chair:** We have one motion. I think we can do stuff fairly quickly.

**Mr. Mark Warawa:** Thank you, Mr. Chair.

I thank the witnesses for being here.

A lot of the questions I had have already been asked and answered, but I'd like to move to slide 5. This is where you just left off with Mr. Watson.

I want to ask about the per day aspect. The doubling of the fines, of course, occurs with subsequent offences. If you're convicted of an offence and then there's another similar offence, that's when the doubling comes in. If it's \$1 million, when does the per day aspect come in if it's a very serious offence involving something like \$1 million? Is that \$1 million per day, or a maximum of \$1 million?

**Mrs. Cynthia Wright:** That would be \$1 million per day.

**Mr. Mark Warawa:** It could add up very quickly.

**Mrs. Cynthia Wright:** Yes. Maybe Sarah wants to add a point.

**Ms. Sarah Cosgrove:** I just want to point out as well that the per day nature, or the possibility to charge per day, exists in many of our statutes already. It's quite a common factor in environmental legislation now.

**Mr. Mark Warawa:** That gives the courts a lot of latitude, but the maximum will be far above the \$1 million. If it's \$1 million per day, and if it's a second offence, it could be \$2 million a day. Am I reading that correctly?

**Mrs. Cynthia Wright:** That's correct.

**Mr. Mark Warawa:** Thank you.

Slide 10 deals with restoration, and Mr. Watson also asked about that. Could you elaborate on eliminating the profit that could be made from the offence?

In your opening comments, Ms. Wright, I think you mentioned that some would see the present fines as just the cost of doing business, and we want to eliminate that. If a profit has been made through this offence and there's a fine, but they're still ahead of the game after paying the fine, can the cost of the offence be increased by eliminating any profit that's been made?

**Mrs. Cynthia Wright:** That's correct. The bill proposes that there be an additional fine equal to any benefit or advantage or property gained from the offence.

**Mr. Mark Warawa:** Okay, then I'm reading that correctly. Thank you.

I'll move to slide 13. Ms. Wright, regarding the administrative monetary penalty, you used the example of somebody filing late. That tweaked my ears. I was hoping the example would be of somebody who was creating an environmental offence, not filing late. We then heard from Sarah that there were other examples.

Just for clarification, what is the main focus of this? Is it administrative, such as people filing late, or is it focused on actual environmental harm?

•(1025)

**Mrs. Cynthia Wright:** The administrative monetary penalties would not be used if there was actual harm. They are for what are considered administrative issues. I gave the example of a minor bag limit exceedance. One could argue there's a degree of harm there, but there's probably not an impact on the overall population of that species, so that would be considered a minor infraction.

They're not meant for cases of actual harm. My colleague gave the example of a spill; you would not use an administrative monetary penalty for that kind of infraction.

**Mr. Mark Warawa:** Could you touch on shipping? How is this going to be enforced, if there is a fine or an offence? We have more than 100 new environmental enforcement officers. How are they going to enforce the shipping aspect of it, and what are some of the concerns we may hear from witnesses from shipping, regarding this legislation?

**Mrs. Cynthia Wright:** Maybe we could start with Albin, but Sarah could give examples of the kinds of concerns we might hear.

[Translation]

**Mr. Albin Tremblay:** For our enforcement officers, these are still the same laws and regulations that have applied up to now. One part of the Canadian Environmental Assessment Agency handles ship oil spills. Environmental emergency cases are determined very precisely, and our officers are invited to investigate. It's in these situations in particular.

For the rest, I can ask my colleague to give you more details.

[English]

**Ms. Sarah Cosgrove:** We have heard from the Canadian Shipowners Association that they are somewhat concerned with the marine officer liability provisions being proposed, so we are addressing that.

**Mr. Mark Warawa:** Thank you.

**The Chair:** Mr. Trudeau, this is the third round.

**Mr. Justin Trudeau:** Thank you very much, Chair.

I would like to follow up first on a point Mr. Woodworth brought up on the idea of publication of warnings, and obviously I won't get into the political side of things with you.

[Translation]

Mr. Tremblay, you said that the process culminating in a warning was just as rigorous as the process that culminated in the imposition of a summary fine. Is that so?

**Mr. Albin Tremblay:** The only difference is that the decision is not made by a court judge. Our enforcement officers are in fact the ones who, in specific cases, decide on the most appropriate means of correcting the situation and who issue a warning. This decision is based on a series of criteria taken into consideration. The warning is issued to the person who has committed the offence.

**Mr. Justin Trudeau:** Once the warning is issued, a copy is obviously kept in the record of this individual or this organization, so that, if...

**Mr. Albin Tremblay:** It's entered in our information system, which contains all the cases we're working on.

**Mr. Justin Trudeau:** So, theoretically, it would be possible to make this information available if there were a political decision.

**Mr. Albin Tremblay:** Theoretically, yes.

**Mr. Justin Trudeau:** Thank you.

[English]

To come back perhaps to Mrs. Pearson and the point Mr. Calkins brought out, which I think was a very important one, when we have enforcement officers out in the field, armed perhaps with a sidearm, imposing fines of potentially \$1 million, have there been issues of security addressed? Are we concerned? Have there been incidents in the past when our park wardens have been in dangerous situations, and are we concerned that the increase of fines will have an impact on the safety of our officers?

**Mrs. Darlene Pearson:** First of all, I should say that the arming of our officers is quite a new process for Parks Canada, and we are in the process of training people, hiring people who will be armed enforcement officers, and purchase of sidearms. There is a screening process involved. We do not yet have enforcement officers with sidearms in the field. We will be ready for this coming operating season.

I should point out that the question of a \$1-million fine remains theoretical until there is actually something brought before the courts and a court judgment. What is of more concern is just having an officer in the field and making sure that person is properly protected and in a position to operate safely.

• (1030)

**Mr. Justin Trudeau:** Park wardens, I know from stories and personal contact with friends, are often armed with rifles and .30-06s and guns to deal with bear issues and such. So there are many people out there with guns who are on our side, perhaps not specifically enforcement officers, but certainly a warden often carries a gun in back-country situations.

Are we not a little bit worried about potential conflicts there?

**Mrs. Darlene Pearson:** No. I think the agency has taken measures to make sure that its wardens operating in the field are protected. And we're very carefully delimiting their duties and responsibilities that are enforcement-officer-related responsibilities, and those will be carried out by our armed wardens. Vis-à-vis the kinds of responsibilities that are more aligned with resource conservation, it's sometimes difficult to draw the line, but we're working on policies and we're training up to be ready to implement these new policies.

**The Chair:** You have about 30 seconds.

**Mr. Francis Scarpaleggia:** No, I'm okay, thanks.

[Translation]

**The Chair:** Mr. Bigras.

**Mr. Bernard Bigras:** I'd like to go back to page 11, where it talks about compliance orders designed to enforce measures to put an end to certain infractions of the law. You say that "These may be imposed on any person who causes or contributes to the contravention and may require them to: refrain from such activity; stop or shut down activity; [...]"

Are criteria or guidelines going to be provided so that enforcement officers can determine which measures they are going to impose, or are they going to be given complete discretion in this regard?

**Mr. Albin Tremblay:** Certainly there will be criteria and procedures to follow. This will be included in the training that all

our officers are going to take regularly to keep abreast of any amendments. All our officers benefit from a highly developed training program. At the beginning of every year, updates must be made. All the decisions made by our officers, even if they are founded on their judgement, are based on a series of criteria and tools. This is part of a process within which a series of decisions is made within the organization.

**Mr. Bernard Bigras:** So, from what I understand, under the act, power is discretionary.

**Mr. Albin Tremblay:** It is the enforcement officer's decision.

**Mr. Bernard Bigras:** You're telling us that directives should follow.

**Mr. Albin Tremblay:** There will certainly be some directives, decision-making tools, well defined criteria, which will support their judgement.

**Mr. Bernard Bigras:** There is an amendment to the act, but the department must have some idea of the type of measure to enforce, between measures aimed at stopping certain activities, on one hand, and, on the other, measures designed to shut down an operation.

I'll give you an example. In February 2009, charges were laid against Syncrude, which was dumping so-called harmful substances into settling ponds. By acting thus, the company was contravening the Migratory Birds Convention Act. In such a case, since additional powers are going to be given to enforcement officers, under the act, would the recommendation be to shut down the operation or to stop certain activities? What would the recommendation be?

**Mr. Albin Tremblay:** As far as this very specific case is concerned, the offence was not due to the fact that the company was dumping substances. These ponds are indeed designed to store processing residue. Under their permit, however, these people should have made use of tools, of very specific measures, to ensure that birds would not land on these ponds, for example, nets, warning signals and so on.

• (1035)

**Mr. Bernard Bigras:** I see.

**Mr. Albin Tremblay:** However, they were not all functional. In such a case, we could have recommended that the company ensure that, by the next day, or at least as quickly as possible, it put back into operation the tools serving to warn the birds and prevent them from landing on the pond in question. This is a theoretical example of how to use directives to enforce measures or stop activities. What determines the choice of one or the other? It's the importance of the impact of this situation on the environment. Even there, though, it's a matter of judgement.

**Mr. Bernard Bigras:** If the proposed measure consists of closing down the operation and that has financial consequences for the company, is that taken into consideration? Are there provisions in the act that take such impacts into account?

**Mr. Albin Tremblay:** Not in the act, but in the procedures.

**Mr. Bernard Bigras:** So the financial impact on the company of the measure imposed on it is taken into consideration.

**Mr. Albin Tremblay:** For us, environmental law enforcement officers, the environmental criteria are the most important ones.



**Mr. Bernard Bigras:** I'd like to know whether financial criteria are taken into consideration, for instance, if the consequence of the measure is the closing-down of the company.

**Mr. Albin Tremblay:** Not to the detriment of the environmental criteria.

**Mr. Bernard Bigras:** So, if we consult past cases, we will never find a single example of a situation where it was decided not to enforce a measure because of the impact it would have on the company.

**Mr. Albin Tremblay:** Not in cases where we have judged that it was absolutely necessary to put an end to a situation for environmental reasons.

**Mr. Bernard Bigras:** All right.

[English]

**The Chair:** Madam Duncan.

**Ms. Linda Duncan:** Thank you, Mr. Chair.

My first question is for Ms. Pearson. I note that one of the proposed amendments to the Canada National Parks Act appears to be a very progressive measure. I don't know if I'm interpreting it properly. The proposed subclause 19.1(1) is an addition that now allows parks to appoint representatives from aboriginal governments. Am I reading it correctly? Is it the intention of Parks Canada, in some of the northern or isolated parks, to potentially appoint some first nation members as officers to enforce the Parks Act?

**Mrs. Darlene Pearson:** We actually have that provision in our current act. In the new legislation, we have differentiated between enforcement officers who will be our warden complement and will be armed and other people who can carry out enforcement duties that could be more related to prevention and would not put them at the front line and that would include representatives of aboriginal governments.

**Ms. Linda Duncan:** Unless they happen to be appointed as wardens.

**Mrs. Darlene Pearson:** Unless they're already wardens or they're already members of a police force in another jurisdiction.

**Ms. Linda Duncan:** Thank you very much. That's a good clarification.

I have a question for the Department of Justice. When I was a chief of enforcement and for a certain period of time after that, the funds for the actual prosecution of cases, including bringing in expert witnesses and so forth, actually came from Environment Canada. It was from the green municipal fund and not from the Department of Justice. Could Environment Canada or the Department of Justice outline for us who actually has to pay for the prosecutions, as opposed to the public prosecutors themselves?

**Mrs. Cynthia Wright:** Perhaps I could handle that.

It's a bit of a mix. Funds were transferred to the Department of Justice for prosecution, but it depends on the case, the workload, and other factors. Justice has resources for prosecution as well. It's not solely up to Environment Canada to pay for it.

**Ms. Linda Duncan:** Is there a contingency fund set aside, with this \$33 million over five years, where you have funds or a certain portion set aside to actually move forward on a prosecution?

**Mrs. Cynthia Wright:** There wasn't any decision to specifically fund prosecutions. Justice has received other resources. I think the situation has changed quite a bit in the last 20 years in terms of how prosecutors are funded.

**Ms. Linda Duncan:** I have a question for Ms. Tingley. Is the Department of Justice moving forward on appointing more special prosecutors? I know that for a long time you've had a fantastic prosecutor in Vancouver who has a wonderful record of proceeding with Environment Canada's cases. I think there's one in Alberta.

Given the greater attention to enforcement and more money being given to the department, is the Department of Justice also going to be moving forward on appointing full-time environmental prosecutors, as some provincial jurisdictions have done?

• (1040)

**Mrs. Linda Tingley:** This may seem like a technical response to your answer, but there is actually a separate office of public prosecutions, which is no longer part of the Department of Justice. We report to the same minister, but they're at arm's length.

**Ms. Linda Duncan:** Can anybody on the panel answer this question, or do I need to hear from the office of public prosecutions?

**Mrs. Linda Tingley:** I'm sure you'll get a more satisfactory response from the office of public prosecutions.

**The Chair:** They are appearing as witnesses on Tuesday.

**Ms. Linda Duncan:** Excellent. Thank you.

I'm sorry, I didn't mean to put you on the spot.

I have one final quick question, if I have time. Could I have clarification on this? I've been trying to go through this rather complicated bill, and I'm looking forward to eventually getting a consolidated version of all these statutes. Do the sentencing powers of the courts remain intact?

I'm trying to sort out whether or not the courts will still have the power to direct, as is the case under CEPA right now. They have a broad array of fantastic powers, which are similar to the provinces' powers, where they can direct that remedial action be taken. They can direct that all kinds of measures be taken. I'm somewhat confused by this new fund that the court cannot direct and the powers that are in CEPA, where the court can in fact give direction that those very measures be done. Perhaps you could explain how the two work together.

**Mrs. Cynthia Wright:** I might have left the member a little unclear, Mr. Chair.

If you look on page 24 of that general overview of Bill C-16, you'll see a whole list of court orders that the courts may do. The court may also order the offender to pay for damages or impacts on an individual—for instance, a property owner adjacent to a spill. That would be in addition to an environmental defence fund.

**Ms. Linda Duncan:** So that broad array of innovative sanctioning powers remains.

**Mrs. Cynthia Wright:** Correct—and it's being applied to additional statutes.

**Ms. Linda Duncan:** Great.

**The Chair:** Your time is up.

**Ms. Linda Duncan:** Oh, okay.

Thank you very much for the clarification.

**The Chair:** I have one question that I want to raise before we move on to other business.

In here, in a number of different places, we're giving immunity to enforcement officers, similar to what's already available, as you say, in the Shipping Act. Each clause pretty much says so with regard to the applicable acts—for instance, "Enforcement officers and analysts are not personally liable for anything they do or omit to do in good faith under this Act."

Who determines good faith? I'm always concerned about unintended consequences.

**Mrs. Cynthia Wright:** I'll let Sarah answer that one.

**Ms. Sarah Cosgrove:** This clause would be relied on in the event that civil action were taken against enforcement staff. It would be the courts that would determine that.

**The Chair:** So it's still the judicial system that would make that determination. Okay.

Do these types of clauses for enforcement officers also exist in...? I know you mentioned the Shipping Act, but does it also exist for peace officers, such as police officers and so on?

**Ms. Sarah Cosgrove:** We're not aware of...

**The Chair:** That's fine. I just thought you might be able to answer that.

We are out of time. We do want to move on to other business.

To the witnesses, I do appreciate your coming in. Just so that Environment Canada and Parks Canada know, the committee feels it's important—we also discussed this at subcommittee on Tuesday—that we have some front line enforcement officers appear before us. As you can hear from the committee members, there is a concern about safety, about the enforcement side of this business. We will have some of the regional and line staff appear on Tuesday, or that's our hope.

There were some questions that you'd said you'd get back to us on, and I do ask, Madam Wright, that you get back to committee on some of the questions raised by Mr. Trudeau and other members this morning.

Again, thank you very much. I appreciate your coming in.

If committee members could stay at the table, we will deal with our oil sands and water study and our travel out to Alberta.

We costed it out, and we looked at a number of options. My personal recommendation is that we travel out to Alberta on our travel points to save the committee system, under the liaison committee, some dollars. It would also improve the chances of endorsement by the whips. As well, I am recommending that we travel with all 12 committee members and the applicable staff.

The motion has been circulated. It reads as follows:

That the Committee approve the travel budget for the amount of \$92,038 for twelve members and the necessary staff to travel to Fort McMurray, Fort Chipewyan, Edmonton and Calgary (Alberta) from May 10th to May 13th, 2009 to hold hearings and conduct site visits on the Committee's study of Oil Sands and Canada's Water Resources; and

That the members use their travel points to go to Edmonton and return from Calgary.

Just as a point of information, twelve members versus eight is a matter of only \$5,000 to \$6,000 in extra costs.

Mr. Trudeau.

•(1045)

**Mr. Justin Trudeau:** Obviously I'm new to this, but does the motion engage every individual on the committee to go? If we end up with only eleven, if one of us doesn't want to go or doesn't find it necessary to go, are we contravening this?

**The Chair:** You have the option to substitute members in as well; parties do.

Mr. Warawa.

**Mr. Mark Warawa:** I have just a question of clarification on the motion.

We have the dates in here to "hold hearings and conduct site visits". To my understanding, the intent is that the hearings would be held in Calgary, and Edmonton possibly, that there would not be hearings held at sites like Fort McMurray—

**The Chair:** We'd be visiting, but we wouldn't be travelling there with translation equipment.

**Mr. Mark Warawa:** Correct.

**The Chair:** That's right. That's not in the budget.

If anybody wants to be on the record, they'd have to travel to Edmonton or Calgary. If they just want to meet with us when we're on the ground in Fort Chipewyan or Fort McMurray, that's their choice as well. We'll be there to hear the discussions, of course, as will the analysts, but there won't be any recording of it.

**Mr. Mark Warawa:** For further clarification, I believe it was discussed at the steering committee that we would be starting with a tour of Fort McMurray, see the oil sands, and then come back and have the hearings. Is that correct?

**The Chair:** Yes, but we'd still travel on up to Fort Chipewyan as well by plane.

**Mr. Mark Warawa:** Correct.

**The Chair:** We fly into Edmonton, and we'd charter a plane up and then stay over and we'd be.... We're only travelling up and back and we're staying in Edmonton because hotel accommodations are always tight up there. So we're chartering up to Fort McMurray, then on to Fort Chipewyan, and then back down to Edmonton. And I believe we do still have the helicopter in the budget so we can hover and do good aerial inspection of the site.

I have Linda and then you, Justin.

**Ms. Linda Duncan:** Mr. Chair, I don't have any problem with the motion except it's rather stifling for me because it happens to be my jurisdiction and I likely will not return from Calgary, so I have a problem voting for it. I have no problem with using my points, but I will not likely be returning from Calgary. I'll probably be returning from Edmonton.

**The Chair:** I don't believe this would influence your personal decision on whether or not you return to Ottawa, or even—

**Ms. Linda Duncan:** Okay, so long as it doesn't, because usually I would use my points to go. I could go to Edmonton via Calgary, but I would come back to Ottawa. So I just want to make sure that I'm not ending up having to do twice the points because of the way it's written. I'll just have to figure out my flights.

**The Chair:** No, your points only get used if you travel, and we're going to be coming to Edmonton, where you live, so you're not going to be using any more points.

**Ms. Linda Duncan:** Yes. Okay, I just won't be coming back from Calgary.

**The Clerk of the Committee (Mr. Normand Radford):** It doesn't say "return from where"; it says "return". It could be return from Calgary to Edmonton or return from Calgary to Vancouver.

**The Chair:** Yes, you'll probably use your points to go to Calgary, home, right, unless you drive.

**Ms. Linda Duncan:** That's what I'm saying, that I'd have to use my points twice. Anyway, I'll figure something out.

**The Chair:** No, it doesn't influence that.

**Ms. Linda Duncan:** And as a courtesy to the Bloc members, while we're saying we won't have a formal hearing, I'm a little bit worried, because I'm wondering how we deal with French.

**The Chair:** We'll still have translators with us.

**Ms. Linda Duncan:** So we do still have translators.

**The Chair:** Yes, but it just won't be recorded.

Mr. Trudeau.

**Ms. Linda Duncan:** Okay.

**Mr. Justin Trudeau:** So it's going to be a day trip to the oil sands and to Fort Chipewyan and to hover in helicopters? That's a long day. I understand the limitations on travel. I'm just worried that we're not going to have enough time, especially given helicopters, if there is weather infringement or anything like that.

• (1050)

**The Clerk:** I can speak to that very briefly. It's about an hour or an hour and a half from Edmonton to Fort McMurray, so you'll get there around 9 or 9:30. So from 9 to 9:30 is a meet-and-greet, and then

you have a one-hour helicopter flight, which should be sufficient to give you a good.... That brings you to around 11. From 11 until around one you have two hours for meetings with officials and with some people who work there.

And we have a charter flight, so we're very flexible. The committee can then fly to Fort Chipewyan. We did check the airport, and it's no problem. It's about a 45-minute to a one-hour flight, depending which pilot you speak to. That brings us there about 2:30, so it still gives us an hour or even two hours, which is sufficient, because there are no hearings. You just want to see the place. You leave at four and you'll be back in Edmonton by six.

It is a long day, but that's the reality of committee travel.

**The Chair:** Mr. Ouellet.

Bells are ringing.

[*Translation*]

**Mr. Christian Ouellet:** Mr. Chair, I would like it if we could be provided with a map, a fairly large-scale one, showing the locations of the tar sands operations. This way we'll be able to distinguish where the operators are, the river, and so on, and be prepared. If we're taken there by helicopter, we have to know where we're going and what we're seeing. I'd like it if we could have those as soon as possible, so that we can get our bearings.

[*English*]

**The Chair:** That's a good point, and we'll make sure we have it.

Let's call this motion. The bells are ringing. I'm going to have to cut off debate.

**Ms. Linda Duncan:** Mr. Chair, I have a point of order.

I put a request to you two weeks ago that we start having our hearings covered by CPAC, and every meeting we've had, it hasn't come onto the agenda. I'm wondering when we're going to deal with it.

**The Chair:** Actually Francis has a motion—

**Ms. Linda Duncan:** So can we simply agree to it that we will have CPAC?

**The Chair:** At next meeting I promise we'll put that on the agenda so we deal with Francis's motion.

We have a motion on the floor. Let's deal with it and then I'll adjourn.

(Motion agreed to)

**The Chair:** The meeting is adjourned.





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