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Chair

Mr. Merv Tweed

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•(1535)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Order, please.

Thank you, and good afternoon, everyone.

Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 12. Our orders of the day are pursuant to the order of reference of Monday, March 30, 2009, Bill C-7, An Act to amend the Marine Liability Act and the Federal Courts Act and to make consequential amendments to other Acts.

I think everyone has been informed that the minister, for health reasons, is unable to be here this afternoon, but joining us from the Department of Transport we have Donald Roussel, Jerry Rysanek, Mark Gauthier, and Guylaine Roy.

I understand you have a brief presentation to the committee and then we'll open the floor for questions.

Welcome, and please begin.

Mrs. Guylaine Roy (Associate Assistant Deputy Minister, Policy, Department of Transport): Thank you very much, Mr. Chair.

We're quite pleased to be here today to present the amendments to Bill C-7.

We have circulated a deck that provides an explanation of the bill. So this is a technical briefing from officials.

I have with me experts in the field in case there are any questions: Jerry Rysanek is a director of international marine policy at Transport; Mark Gauthier is general counsel, a specialist in marine law; and Donald Roussel is the director general of marine safety.

We are in your hands in terms of the session, and I'll turn right away to Jerry to make the presentation of the deck.

We would welcome any questions you have on Bill C-7. Thank you.

Mr. Jerry Rysanek (Executive Director, International Marine Policy and Liability, Department of Transport): Thank you very much.

Thank you, Mr. Chairman, and good afternoon, ladies and gentlemen. Chairman, I noticed your emphasis on brief, so I shall be as brief as I can. I'll take you through this deck to present to you Bill C-7.

At slide number 2 we set out the five objectives of the bill. I suggest to you that objectives number one and two are the principal parts of the bill, the core of the bill, dealing with oil pollution caused by ships. Item three is representing a number of changes that are needed in what we call global limitation of liability for maritime claims, and I will explain it later on in detail. Item four addresses a special commercial problem that exists in shipping, particularly by those who supply ships with provisions. Item five deals with housekeeping amendments to maritime law.

Slide 3 is the background to this legislation, to tell you where and how we started. The Marine Liability Act is the principal law of Canada and embodies all key regimes on liability of shipowners and other parties with respect to claims or incidents in which they may be involved.

In 2001, this act was adopted. Since then there have been a number of issues that were brought to the attention of the department, leading to a discussion paper that the department published in 2005 to engage stakeholders in consultations on the next stage of reform of this legislation.

The consultations were wide-ranging, coast to coast, and there has been thoroughly broad support for this initiative. Bill C-7 is not only a contribution to Canadian law; it is also a contribution to international law through the implementation of two international conventions that are involved in this bill.

In slide number 4 we set out the key rationale for this legislation, and I would say the first three bullets are common in nature. They represent the heart of the legislation. It's a link to the environmental agenda in the sense that we have a regime and improvements to the regime that deal with compensation for pollution incidents, including damage to the environment. The regime also respects the very important principle that it is not compensation funded by taxpayers but is funded by polluters. It's based on the polluter pays principle. We're not alone in this policy development. Many other nations have already adopted similar legislation, and they do so particularly for shipping that is international in nature. The last two bullets deal with domestic issues. One deals with adventure tourism, where we need a solution to a difficult problem, and the last bullet deals with ship suppliers and the alignment of Canadian and United States law.

Slide 5 is a snapshot of the stakeholders' response to our discussion paper and to the proposals that are before you. As far as oil pollution is concerned, there's unanimous support, largely because there's nothing terribly new as far as policy goes. We have been party to a number of international conventions dealing with oil pollution. Certainly, the support reflects the impact of the change in terms of the increase in compensation amounts, and I'll go through them in a minute.

Passenger liability is something that has been the objective for a while, specifically to introduce compulsory insurance in support of existing liability regimes. We were not able to do it because of a problem with adventure tourism. If the solution to adventure tourism is adopted in the bill, there will be a way to introduce compulsory insurance for the carriage of passengers in Canadian waters, and in that sense the marine mode will finally catch up to the aviation mode, and that has full support.

• (1540)

On the problem of adventure tourism, let me say that the solution before you is widely supported. There are some concerns, and, if you will allow me, I'll deal with the concerns when I address the issue in detail.

The same can be said about the maritime lien for ship suppliers—a new legislation, a solution to an old problem. It has broad industry support, but there are some residual concerns and I will deal with them.

Let me give you a bit more of a sense of what each element of the bill is all about. I'll start with the first one, which involves a relatively minor amendment. This is a limitation of liability for maritime claims already in the existing act. All I would say about this regime is that it is unique to the marine mode. It provides for a limit of liability following an incident, and it covers all claims arising from the incident, so it is a global limit. It doesn't matter how many claimants are involved in that incident. It is a fixed figure that is established by law and that fixes the liability of the shipowner.

This is a global limitation that has been in Canadian law for many years. We have to re-open the door for adventure tourism. In 2001, the Marine Liability Act changed the treatment of adventure tourism so that it could be brought back into this regime of limit per incidence. We also have this class of persons who may end up on a ship and who may trigger liability, and we want to be absolutely sure that it is understood what that liability is. Here we refer to distressed persons, or persons who are rescued by ships following incidents, to make it clear that these persons are not passengers when they are rescued and thus do not attract passenger liability. It is a technical change. It's not a major change, but it is necessary because the Marine Liability Act currently is not clear on what the situation is for people who are rescued and what kind of liability the shipowner has for those persons.

We also introduce in part 3 a provision that is international in nature. Whenever there is a change in the limits of liability to which we now subscribe by virtue of international convention, whenever the change occurs at the international level, we are bound to accept the change unless Canada objects to it. In the absence of an objection, this provision will provide for automatic updating of our

limits, and it's a good feature to make sure that the limits of liability are kept up to date with international standards.

The last item is fairly small, but it is an important amendment. It deals with shipwrecks or ships that may be abandoned by shipowners for whatever reason, and that may pose a hazard to navigation or to the environment. If the state or governmental authority decides to remove the wreck, the related costs of the removal are then charged to the shipowner. With this change, the shipowner will not be able to claim any limit of liability against the bill for removal of a wreck by governmental authorities, so there is basically no limitation on these types of claims by public authorities.

These are necessary technical amendments to a regime that has been in our law for a long time.

With respect to adventure tourism, up to 2001, a commercial operation involving whitewater rafting, kayaking, canoeing, or whale-watching was subject to the regime I just described. There was one limit per incident, regardless of how many persons were whale-watching on board a kayak, a whitewater raft, or a Zodiac. There was simply one limit, and in the case of an incident, the amount that would be awarded would have to be divided by the number of people involved in the incident—or the number of claimants, if you wish. So the per capita or per person limit was obviously fluctuating depending on how many claimants were involved.

• (1545)

In 2001 this was changed, because we then introduced a stand-alone regime for carriage of passengers by water and a stand-alone liability regime based on a fixed amount per person. In that sense, it was very similar to the regime that exists in aviation. And the amount involved—which is still the amount in the act—was about \$350,000 per person. So in a situation where there was an operation of maybe 20 people on a whitewater raft, the limit of liability became 20 times \$350,000, or \$7 million overnight. That was the effect of introducing the passenger limit, and that was the effect of treating adventure tourism the same way as Marine Atlantic or BC Ferries, or any other large operation.

That was a problem for adventure tourism, because suddenly the exposure was so high that they had difficulty in finding and obtaining insurance. It was also on the heels of 9/11, when insurance markets severely contracted. The problem was compounded by another change in law in 2001, when the Marine Liability Act not necessarily prohibited but invalidated the use of waivers of liability. The waivers were a very common practice of adventure tourism operators, who have their clients, the users, sign a waiver of liability because of the nature of the risk being different from that in typical or common transportation.

So the argument since 2001 has been very strong and convincing that adventure tourism is not transportation and ought not to be treated as transportation—that it is different from Marine Atlantic and BC Ferries, and anybody else in between. More significantly, it was recognized that those who participate in the activities of adventure tourism are not only “passengers”, but often the operators of the vessels as well.

So we came to terms with and accepted the proposition that the law went too far in 2001, and what is now before you is a change to bring the adventure tourism operators back to where they were prior to 2001, taking them out of the liability regime based on per person limits. Once we do that and the law passes, then it will be possible—with the rest of the industry involved in common commercial carriage of passengers, from Marine Atlantic to BC Ferries, and anybody in between—to introduce compulsory insurance, which we could not do as long as adventure tourism was involved in this part of the legislation. They would simply never have been able to comply with the insurance requirements.

It's a solution that is before you. I said that it has broad support, which is true. But there are some residual concerns with regard to adventure tourism among our legal community. I think it would be fair to say that the reaction to our discussion paper in the legal community was not 100%. I think one of the issues, the way I read it, is that they feel it's not progressive but regressive in going back to 2001. I think some of the members of the legal community feel this is not a good policy and that we should preserve the existing regime and not touch that particular part of the law.

• (1550)

The balance of that argument is all over the place, but perhaps I should say that the strongest argument for change is the very fact that we deal with an industry in which the users often participate in the operation, and I think that has to be recognized.

We are also fixing a relatively small problem. At this stage, part 4 of the liability regime for passengers makes no distinction between those who are passengers and do nothing else while they are on board a vessel, going from A to B, and those who are there partly as passengers and partly as sail trainees. We have received a fair amount of input on that particular problem. I think we had to recognize that those who are involved in training conservatorships cannot be considered to be passengers and attract the same sort of responsibility on the part of the ship owner. The proposition before you is to take them out and leave them in part 3, where they have some basic provision in terms of the limit of liability, but not the same provisions as if they were bona fide passengers. So it's a refinement of the law that needs to be done to make sure that sail trainees have a treatment distinct from typical passengers. That's all I can say about slide 7.

In slide 8 is the heart of the legislation. It's the oil pollution, summarized in one page. The first division deals with the international aspects of oil pollution, where following the adoption of this act it will be possible for Canada to ratify two international conventions. The first one, the Supplementary Fund Protocol of 2003, is a protocol to a regime to which Canada has been a party since 1989, so it's not terribly new. It increases the level of compensation that would be available in the future, and I'll illustrate in a minute how big that increase is. This convention applies to oil tankers, so all ships that operate and carry oil as cargo, and it deals with the pollution caused by the spill of oil as cargo.

The second convention, the international convention on bunker oil, is the opposite. It deals with all ships but tankers and basically involves any commercial ship that is using bunker oil as a source of

propulsion. The ship owner will be now liable for any pollution damage caused by bunker oil.

In divisions 2 and 3, I have some general amendments and restructuring of this particular part of the legislation. In number 4 we have a number of amendments to our domestic pollution fund, which we have had for a long time and which is integrated into the overall Canadian regime of liability for oil pollution.

I think the next slide speaks for itself, and it's much easier to use the slide to explain to you what I just said. On the left-hand side, in the big graph, you can see the summary of the international and domestic regime dealing with oil tankers. It's the baby-blue part in the graph that represents the change in the legislation and represents the international convention that we would ratify following the passage of the bill.

Effectively, after this law passes and we become party to the convention, the amount of compensation available for oil pollution claims in Canada would increase from about \$500 million per incident to \$1.5 billion per incident, so it is a substantial increase.

We're not the last one to do it. Many other maritime nations have already adopted the supplementary fund, but certainly it is very timely for Canada to move ahead and ratify this treaty.

• (1555)

On the right-hand side, it's the regime that deals with all other ships. The bunkers convention does not provide the same amounts, but it's certainly still a very substantial change. The convention is represented in the lower part of the graph. You can see it's about \$100 million per incident for any bunker spill. On top of it, we still would have a domestic fund for any excess, providing \$250 million for bunker spills.

The important feature of the bunkers convention is that it comes with compulsory insurance so that any ship, whether Canadian or foreign, operating in Canadian waters would have to have compulsory insurance when this convention comes into force.

The dark blue part is the new regime.

That summarizes the heart of the legislation into the changes for pollution liability and compensation. What is left in the overview is section 5, dealing with enforcement.

Because we have two regimes that deal with compulsory insurance and the obligation of ship owners to maintain insurance and provide evidence of insurance on demand, we need to have provisions that would enable ship inspectors and others, who are involved in verification of documentation that ships have to carry, to have this power to demand evidence of insurance and inquire about availability of insurance with respect to any ship to which the law will apply.

In terms of the final item I will deal with, maritime lien for ship suppliers, this is a commercial problem that is very old and needs some solution. Let me describe what is involved by way of an example.

If a ship arrives in a Canadian port—and I am talking particularly about foreign ships—there are basically three principals who are involved in terms of any supply to the ship such as drinking water, bunker oil for operation, provisions, food, and equipment. It's either the owner of the ship, or the master of the ship, or the ship's agent. The ship supplier at the other end of that relationship provides the ship, on order, with whatever they need and sends them an invoice, because he provides it on credit and expects payment. It so happens that sometimes the ship disappears before a payment is made. This is a problem the ship suppliers have consistently raised. We are pointing out the U.S. legislation, which has a provision giving the ship suppliers in the United States a right to enforce a maritime lien, an instrument by which to pursue and enforce a payment of its invoice.

The call was to level the playing field, because very often a Canadian ship supplier would be supplying the same ship when it's in a Canadian port and the U.S. supplier would do the same for the same ship when it's in a U.S. port. Yet they would each have different rights of enforcement of unpaid invoices.

What is before you is an alignment of legislation giving our ship suppliers under our law a maritime lien, an instrument they can use to enforce payment of invoices if the problem persists. If the problem is resolved, it will not affect anyone. But it is an important tool and it will apply only to foreign ships operating in Canadian waters. It's not going to apply to Canadian ships, because Canadian ships are not the source of the problem, as we understand it. They seemingly pay their invoices on time.

There are some concerns about this, although it is widely supported by ship suppliers, as you can imagine. I understand the legal community has some concerns, largely on two points, that it applies only to foreign ships and that it is not uniform in terms of application to both foreign and Canadian ships. Then perhaps it is too technical, but they feel the ship suppliers should have this right of enforcing a maritime lien only in circumstances where the ship supplier supplied the ships or provided the ships with provisions at the express request of the owner, not the master or the ship's agent.

•(1600)

In other words, they see an important relationship and an important duty of the owner to be the authorized person to actually order the supplies and be responsible for the invoice. That, of course, is an option. It is somewhat more difficult, and I think the ship suppliers would have to respond to it, but it is not the practice today. The practice is to deal locally and to deal with people who are in contact with the ship supplier, not necessarily the owner, who may be located halfway around the world.

That is the concern. I thought I should put it to you, but overall it has wide support.

A voice: You should perhaps mention that this is not the case around the world.

Mr. Jerry Rysanek: I appreciate the comments of my colleague. This is a harmonization of Canadian and U.S. law, and I should say that this is not necessarily a contribution to international law. There is no similar legislation that would be widely adopted in other countries. It is quite the opposite. U.S. and Canadian law in this

respect would be rather unique, but we have to recognize that this is the geographical situation that our ship suppliers face. Because they often supply to the same ships, it is important that they have similar tools and a similar position in terms of enforcing their rights.

With that, Mr. Chair, I think I will finish the policy part of this presentation and leave it to my colleague, Mr. Gauthier, who is a lawyer and who is well positioned to deal with the next three items, which are largely legal in nature. Thank you.

Mr. Mark Gauthier (General Counsel, Legal Services, Department of Transport): Thank you very much.

The Chair: If I may, we are running fairly long on time on the presentation, so please keep it as short as you can. We have a lot of questions.

•(1605)

Mr. Mark Gauthier: Yes, Mr. Chair. Thank you. I will certainly endeavour to be quite brief, and I think I can be brief and not sacrifice content.

The next point on the deck deals with what is referred to as a general limitation period. This is a common feature found in most statutes prescribing a time beyond which a claim cannot be brought before a court.

There is such a provision in the Federal Courts Act and there are provisions in the Marine Liability Act scattered here and there dealing with general limitation on specific subjects, particularly relating to the various treaties and conventions that are annexed to the Marine Liability Act. But there is no general provision to address a claim brought in any court that has admiralty and maritime jurisdiction in Canada—for the sake of argument, the superior courts of the provinces. To that end, a new general limitation period, none hitherto existing, is being proposed—as you see in the deck—providing a three-year limitation period for a claimant to bring his or her claim to the courts pursuant to the act.

In addition, there is on page 11 of your deck an amendment that is purely technical to the Federal Courts Act, which seeks to in effect align the English and the French text of a particular provision. The maritime bar and the industry has complained over the years that for 15-odd years a particular provision, namely section 43, reads differently in both versions. We thought this was an excellent opportunity to also amend the Federal Courts Act, and we are using this opportunity to do so.

[*Translation*]

Mr. Chair, committee members, the last amendment is one that can be found in most bills, i.e., transitional or consequential measures intended to ensure that the references to this act in other pieces of legislation are consistent. Those are the three legal amendments that have been brought to this bill.

Thank you.

[English]

The Chair: Thank you very much.

Mr. Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you very much, Mr. Chairman.

I thank the four representatives of the department for giving us what has turned out to be a rather comprehensive presentation. As you're probably aware, we normally have about seven minutes for presentations and then we go into questions and answers. But your presentation is appreciated, nonetheless.

I want to focus on two things that I wondered about. Mr. Rysanek, and maybe his colleagues, can help us out on this.

Let me start with the general point, if I might. There are two issues that have been raised amongst us, both in debate and individually. One, of course, is the polluter pays principle and how the legislation increases the liability amounts to both reflect the international norm but also the increase in the value of the damage to the environment in the event of a problem. This is the first point.

I'm wondering whether you would address, if you can, whether the limit that's been placed now reflects the reality of the economic value, in dollar amounts, of potential spills. The one example that has come forward is the *Exxon Valdez*, which far exceeded the amounts the company and community thought was going to be required for cleanup.

Secondly, the value of the dollars then compared to now far exceeds the amount you've put in the legislation as a limitation. Is there a valid reason this committee should accept the limit and not amend the amount to a more significant limit?

Mr. Jerry Rysanek: Thank you for both of your questions.

First, if I may deal with the polluter pays principle, in this legislation the polluter is not one party but two parties. They are the shipowner and the owner of the cargo, the company that is importing the oil. That is established under international conventions, to which we are a party.

•(1610)

Hon. Joseph Volpe: But the limit is per incident and not necessarily per party.

Mr. Jerry Rysanek: That's right. It's a per incident—

Hon. Joseph Volpe: So it doesn't matter whether there are two parties, three parties, five parties; the amount is what it is.

Mr. Jerry Rysanek: Yes. I was getting to your point where you asked about the increase for a shipowner. Because there are two parties, we have to look at which party actually is taking the increase.

On slide number 9, when I look at the international convention we would be ratifying, that blue section represents only one party. It is the cargo owner who is actually going to deal with this change more than the shipowner. In terms of the shipowner, the new legislation before you is not changing anything. The brunt of the change is allocated to the cargo owner, by virtue of the international regime.

Is the amount sufficient to deal with an *Exxon Valdez* in the future? Well, this change you're looking at is a result of major incidents that have occurred in Europe over the last few years. The international community reacted and adopted this new protocol. It is sufficient to deal with some of the massive cases that have been experienced in Europe recently.

I think the *Exxon Valdez* stands on its own. It's a very unique case, perhaps largely because of the way U.S. courts deal with claims and the way they dealt with that particular claim. I should leave it to lawyers, but I know enough that some of the amounts involved were punitive damages, which are not normally part of any settlement in Canadian courts.

As long as an *Exxon Valdez* happened in Canada and it was handled by Canadian courts, the answer to my question would be, yes, the amount is sufficient.

Hon. Joseph Volpe: Thank you.

The second item has to deal with, as you quite rightly pointed out, how the legislation treats the passenger, trainee, participant in adventure tourism. I'm concerned whether this would include as well some of the passengers on cruise ships; I'd like perhaps Mr. Gauthier to clarify that for me. I'm still unclear as to the liability apportionment associated with adventure tour operators and their passengers—tourists, trainers, adventurers.

I have to confess that if I want to give some assurance to any of the property owners along a particular coastline...that they have sufficient access to claiming the damages for either cleanup or for other personal or property liabilities under this act.

Mr. Jerry Rysanek: The legal aspect of your question I would leave to Mr. Gauthier.

Mr. Mark Gauthier: Yes, Mr. Volpe, I certainly understand the burden of your question, in terms of whether or not there would be some sort of overlap between adventure tourists, shall we say, and someone like you or me, for example, who might book a passage on a Carnival vessel.

Proposed section 37.1 of the act seeks to circumscribe what the elements of adventure tourism are. I will cite just two of these paragraphs to highlight the point that it would be unlikely to confuse adventure tourism with the classic passenger on a cruise vessel.

Hon. Joseph Volpe: Or, if you don't mind, Mr. Gauthier, while you're giving me that explanation, consider someone who is—I'm not sure this is the appropriate term—a passive passenger on an adventure tour, as opposed to the actual paddler; someone who may not have any awareness of the condition of the ship that got them to the point where he or she would be engaged in that adventure activity but might still be held liable for the ship or the boat that brought him to that spot, if it were engaged in an accident that creates an occasion for liability, either against property or environment or individuals.

•(1615)

Mr. Mark Gauthier: Sir, if I understand the concept of a passive participant in a marine adventure, again if I may I'll point to proposed subsection 37.1(1), which contains a paragraph (d) that talks about exposing the participant to risks when these "have been presented to the participants and they have accepted in writing to be exposed to them". This is pure speculation, but I would speculate that even "passive individuals" sitting on board a raft would have been asked to sign these waivers in any event. Then by definition they would fall within the marine "adventure tourist" class of individual. Of course, it would be for the courts to decide, but the way I read section 37.1, I hate to say it creates a watertight compartment of individuals, but I think it affords enough specificity.

The Chair: We're well over time here.

I have to go to Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chair.

I would like to continue with the same topic, i.e., adventure tourism and sail trainees. I am thinking of the accident involving Laura Gainey. It was unclear whether she was a sail trainee or not. I would like to know whether this applies in such cases or is totally unrelated.

[*English*]

Mr. Jerry Rysanek: Thank you very much for the question.

I am aware of the case and the circumstances involved. I think what we are trying to do here is to provide clarity for any future cases of the same nature.

At the moment, it could be argued that a sail trainee who paid to get on board a passenger ship or a sail ship with passenger capacity could be a passenger, and they could be treated as a passenger, as compared with any other commercial operation, and attract the liability of the shipowner at the limit of \$350,000 per person. But when we reflect on the activity involved in this particular case, the balance of view is that the person is not really 100% passenger. They are participating in the operation of the ship. They are being trained to operate it. That's what we're trying to reflect.

This is being reflected in the law by taking out the concept of pure passenger carriage. There will be no automatic \$350,000 per person as if it were true commercial carriage. It will be left in part 3 of the act, which deals with all types of claims.

The individual still has the right to sue to try to recover—or the next of kin does, if it comes to that—but the limit of the shipowner would be different. It would not be the \$350,000 per person, as if it were passenger carriage; it would be a flat limit, as applies to any type of maritime accident.

By illustration, if such a very high political case were to happen that 20 sail trainees were involved in a major incident, all 20 sail trainees, or any claimants on their behalf, would have to share in the per incident limit.

So that's the only change here. We're simply recognizing that they're not 100% passenger; they're somewhere in between. The right of the individual will be different, but still protected.

Mrs. Guylaine Roy: Just to clarify, we would not want to comment on a specific case. I just want to make sure you know that we wouldn't want to comment on a specific case.

Jerry's comments were, broadly speaking, what would apply to a trainee with the amendments. Jerry is indicating that there was some uncertainty about who is a passenger and who isn't. The bill would clarify that a passenger is a passenger, and a trainee would not fall under the category of passenger.

It doesn't mean that if something happens to a trainee there would be zero dollars available. It just means that different coverage is available. There was this uncertainty about what is a passenger, and the bill would clarify that.

So I just want to clarify that we don't want to comment on a specific case. The comments are broadly about what the bill would do.

•(1620)

[*Translation*]

Mr. Mario Laframboise: You say that will clarify the situation, but I am not so sure about that. Was your objective to clear things up?

Mrs. Guylaine Roy: Yes. According to the definition in the current legislation, it is unclear whether a sail trainee is a passenger or not. The bill would clarify the definition of the term "passenger" and exclude from that category a sail trainee.

Mr. Mario Laframboise: But would there not be a new provision requiring people to sign a waiver beforehand?

[*English*]

Mrs. Guylaine Roy: I'll leave that to Jerry, but I don't think so. The law will be the law, if adopted.

Jerry, you can clarify that.

Mr. Jerry Rysanek: No, they will not be required to sign any waivers.

[*Translation*]

Mr. Mario Laframboise: You say that this raises legal issues. You appear to be saying that this would bring us back to how things were before, that is before the act was amended. You have touched on the legal comments, but I would like to know what the key legal criticisms are.

[*English*]

Mr. Jerry Rysanek: We are now talking, of course, about adventure tourism, not sail trainees, because of the adventure tourism we're bringing back. The sail trainees issue has a different history.

I think the legal aspect, or the concern of the legal community, with respect to this change, is that they feel the protection—I understand that's the way they see it—of the public, or those who engage in adventure tourism activities, is taking on a different quality. Now, after the law is enacted, they will be subject to one common limit, which they will have to divide among themselves in case of an incident. At the moment, they all have protection per person. That, I think, is the issue here.

They also will be invited or asked by operators to sign a waiver. Remember, we are in adventure tourism. It is a common practice. Today, the waiver is illegal. We are now permitting the waiver. That's the legal issue—restoring certain rights of the operators and owners involved in adventure tourism, which they do not have at the moment.

Those are the concerns, but there is no other way to do it. We either consider them transportation or we don't consider them transportation, and the prevailing argument is that they are not transportation.

The Chair: Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

Thank you, witnesses, for coming forward and casting some clarity on this Marine Liability Act, which has been a difficult one to analyze. Certainly the discussion paper in 2005 helped considerably with a lot of the details.

You say you've consulted with stakeholders from all sectors of the marine industry. Can you give me a description of the consultation process and whom you talked to?

Mr. Jerry Rysanek: Yes. We have a very long list of associations involved in maritime transport—more than 20 of them.

If I look at the five key points of the bill, on oil pollution, we would consult the ship owners, we would consult oil companies that are potentially involved in the legislation, the legal community, and both domestic and international insurers.

On adventure tourism, of course, it was adventure tourism operators who raised the issue with us consistently over the last seven years. Domestic insurers, the legal community, and tourism associations were particularly involved, and they acted on behalf of adventure tourism.

On maritime lien, we consulted with ship suppliers and shipowners as well, who are basically the other party here in terms of the ship suppliers problem. They recognize that some ships cause this problem.

It was a very wide-ranging consultation. We consulted academics as well, of course.

•(1625)

Mr. Dennis Bevington: The Dalhousie marine and environmental law certificate program?

Mr. Jerry Rysanek: I'm not sure if we had any direct input from Dalhousie, specifically, but I'm sure we always send them copies of our discussion papers.

Mr. Dennis Bevington: Okay, so pretty wide-ranging. Unions?

Mr. Jerry Rysanek: The guild and the merchant guild, yes, we worked with them.

Mr. Dennis Bevington: Thank you.

One thing that struck me when I looked at the 2005 discussion papers is that these conventions came forward many years ago, in some cases. They've been international conventions for upward of 25 years, some for 35 years, and Canadian law has taken pieces out of these conventions over that time but has never ratified them and never taken on the conventions. What would be the reason why, over this period of history, we didn't take on these conventions at an earlier time and ratify them?

Mr. Jerry Rysanek: In terms of the oil pollution conventions, which are already in our law, as I said, Canada became a party in 1989. In fact, Canada has ratified these two conventions.

On the convention dealing with limitation of liability, where I talked about the provision dealing with wrecks and wreck removal, I think you have a point. We ratified it only last year, 2008, although the convention was last amended in 1996, so that's a fair amount of time.

I think the development of a convention and the ratification process, the discussion, the various steps that are needed, are things that cannot be done overnight. In a certain way, if you look at the history of development of this particular act, it's always a collection of legislation from time to time, because it's very difficult to move with a particular legislation that is fairly small in nature and triggers legislative process because of it. Sometimes it is a sweeping effect, if I can use that expression. We bring them all together. That's why you see four international conventions, effectively, involved in this bill.

Mr. Dennis Bevington: Basically, this is simply the coming together of all these different things. There are no particular parts of the convention that were more difficult to deal with in Canada. You were in agreement with these conventions from day one, you were adding them into Canadian law as you saw fit, and there was never a hardship with any of the—

Mr. Jerry Rysanek: There was never any hardship, but perhaps as a supplement to your question about the timing, international conventions that are contributory in nature, that involve money and payments of claim are a matter, of course, of entering or joining the convention at the right time. I think it is the case that it serves very little purpose to be the first party to ratify a convention if the rest of the world hasn't done it yet. This also plays into the timing issue. I think, certainly in terms of the oil pollution conventions, yes, it is high time that Canada ratifies that.

Mr. Dennis Bevington: The law talks a lot about the collection of these funds. Could you give me a little more of a description of how that works?

Mr. Jerry Rysanek: If you would be good enough to look at slide 9, it makes it easier. The current convention to which we are a party is the pink layer. This is the international fund that is established under a convention. It's located in London, U.K., and Canada contributes to the fund whenever the fund needs money to pay oil pollution claims around the world.

The way we manage our contributions to the fund is by using the domestic fund, the Ship-Source Oil Pollution Fund, which is at the top of this graph, and using the resources of that fund to pay our international contributions. Now, where does the Ship-Source Oil Pollution Fund get its money? At the moment it gets its money through accrued interest, which is earned on the balance of the fund, and that accrued interest is credited to it from the Consolidated Revenue Fund. That's a provision in our law in recognition of the fact that the seed money for the domestic fund came from the oil industry in the 1970s, when the fund was first established. The funds were first collected from oil companies. Then there was a point where there was no need to collect any more because there were no claims. The collection was stopped in 1976, and ever since then the domestic fund has grown by accrued interest, and it is using the accrued interest to pay our obligations to the international funds. That's how the financial part operates.

•(1630)

The Chair: We're past time again.

Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Mr. Chair, I will be sharing my time with Madam Gallant.

My first question is to Mr. Rysanek.

To be clear, marine law is associated with coastal waters or salt waters, but this also applies to inland waters and freshwater, is that correct?

Mr. Jerry Rysanek: Yes.

Mr. Colin Mayes: Okay. I wanted to be clear on that.

As a member of Parliament from British Columbia living in the mountains, I'm happy to see that the adventure tourism industry is going to see these amendments to the whitewater adventure providers, which have been challenged by liability insurance since 2001, when this act first came in. I know that my colleague will speak more to that.

I want to talk a little bit about this fund and how it's administered. You've explained where the money comes from, but who receives that fund and makes the decisions to allocate funds, or to spill them, and assess where that money goes?

Mr. Jerry Rysanek: The fund is agency-administered by the administrator of the fund, who reports to Parliament through the Minister of Transport and annually submits a report to Parliament. Broadly speaking, the administrator of the fund is responsible for handling claims that are filed with the fund, claims for all pollution. He is responsible under the law for considering these claims, investigating them, and deciding on payment. He also pays all handlers' claims.

We deal with pollution from a specific ship as well as mystery spills. This feature is not available internationally, but we have it in

the domestic fund. As long as the claimant proves to the administrator that the pollution was caused by a ship—even though he might not know the identity of the ship—the domestic fund pays. That's the duty of the administrator, and he's responsible for authorizing payments.

In respect of the payments—and those are sometimes fairly large payments that he makes to the international fund—the process is somewhat different. Canada, as a member state of the international fund, participates in discussions on the international fund and helps to determine how much money the fund needs at any given time. Once Canada agrees to a requirement at the international level, the invoice is sent to the administrator and he has to pay it. It's the decision of the international fund, and under the law, it is clear that he has the authority and responsibility to pay. Up till now, he wasn't able to do it through accrued interest, without diminishing the outstanding balance in the fund.

Mr. Colin Mayes: This fund is liability insurance for the ship itself. Is that correct? I need to have an understanding of that.

Mr. Jerry Rysanek: This fund deals with the liability for pollution damage, or pollution losses. It has nothing to do with the product carried onboard the ship. There must be pollution, there must be linkage to a ship, and there must be a reasonable demonstration of damages and losses. It has nothing to do with what the ship carries at the time of the incident.

Mr. Colin Mayes: Thank you.

Mrs. Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Witnesses, I want to thank you for your hard work on this bill. It has been many years in the making. I want to thank you especially for the amendments that relate to adventure tourism. Whitewater rafting in Canada was pioneered in my riding of Renfrew—Nipissing—Pembroke, just about an hour and a half up the river from Ottawa.

The problem was that when the maximums of insurance in the previous legislation were implemented, those maximums were the large shipping lines. The prime minister of the day had Canada Steamship Lines, and that would have benefited those types of companies greatly. But for adventure tourism, those maximum limits became their minimums. Some of these rafts have six people, some 12, some 20, depending the size of the raft. When you go rafting, the smaller the raft, the more exciting it becomes and the more active.

They had to have \$350,000 per head on each person. But the problem wasn't even a matter of high premiums, necessarily. No insurance company was going to provide them with coverage. The industry faced extinction at that point. Out in rural areas, like Renfrew—Nipissing—Pembroke, many summer jobs are provided through this industry. We started out with one, Wilderness Tours, and now there are many along both sides of the river.

Many people on the Hill and in industry spent their summers working with the rafting companies. It provides an income to university students so they can further their education, and it teaches them good ethics and how to be a good worker. So I thank you for that.

What I'd like you to do for us now is redefine what adventure tourism is.

•(1635)

Mr. Jerry Rysanek: First of all, thank you for your kind words. I learned very quickly that this was a fairly complex problem. Actually, it was initially easy to solve, but there were a number of people involved in the solution. They are in the room, and I know they appreciate your generosity.

In terms of how we eventually arrived at the solution, we went through many loops. First, we were looking at the type of ship. Should we handle it by way of the ship type? Should we handle it by way of monetary limits? Was there some other option? None of them really worked, so we had to craft a test and put it into the law with the support of most of those we consulted. It basically gives the operator in adventure tourism two responsibilities: a new requirement to tell people what is involved; and to respect any existing safety provisions that apply to that industry, i.e., to make sure that if there is a requirement for life jackets, people will have them, or that if special equipment is required, people will have it.

The bottom line is that the operator has to tell people that theirs is a unique operation, and the people have to acknowledge in writing that they understand it. That, I think, is the basis on which this can work, and can work successfully. With full knowledge, I don't think people will have a problem in making an informed decision whether or not they wish to participate in the activity.

This solution has the widest support of all of the ones we tried, and I hope it will move forward and be adopted.

Mrs. Cheryl Gallant: Mr. Chairman, I might like to point out that the only way for committee members to truly understand how this adventure tourism amendment works is to maybe come as a group up the valley and participate in a run down the river. They could maybe take six hours on a Saturday, so we're not taking time away from parliamentary duties or having to negotiate with our whips. I'd like to offer that to you.

Thank you.

The Chair: Well, I'm sure the subcommittee, when they're doing their planning, will take that into consideration, Ms. Gallant.

Some hon. members: Oh, oh!

The Chair: And I'm sure that as the weather warms up, we'll all want to go.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you very much, Mr. Chair, and thank you, panel.

I would like to echo the comments of Ms. Gallant about the good work and the presentation, with a lot of information.

I'm quite confused about the adventure tourism operators. Will insurance be compulsory for those operators?

•(1640)

Mr. Jerry Rysanek: No, there is no provision for compulsory insurance for the operators in adventure tourism.

Mr. Sukh Dhaliwal: Why wouldn't we require it?

Mr. Jerry Rysanek: Did you ask if there is a provision in the new act, or if there was one in the previous act?

Mr. Sukh Dhaliwal: In the new act.

Mr. Jerry Rysanek: There is no provision for compulsory insurance in the new act.

Mr. Sukh Dhaliwal: When there's no insurance and a person gets injured, how would that be dealt with?

Mr. Jerry Rysanek: The insurance is left to the operators to obtain; there is no compulsion to do so. Most of them will—we know that—but there is no provision to compel them to have insurance. They have limited liability in law, but there is no provision to compel them to have the insurance against those limits.

Mr. Sukh Dhaliwal: How would you enforce these things? Would you hire more people to enforce these new regulations? How would it work?

Mr. Jerry Rysanek: In terms of imposing insurance, I don't think it's a matter of hiring anyone. The choice we were facing was whether or not the industry should be treated as it was prior to 2001, when they had a statutory limit but there was no obligation or requirement to have insurance, or whether they would be where they are now, where we know they cannot obtain the insurance. So as long as it's accepted that they are being placed in the same position as they were prior to 2001, I think it is safe to assume that most of the operators know very well that they have to protect themselves—and they will—through insurance.

Mr. Sukh Dhaliwal: Thank you.

Can I pass this on to my colleague, Andy?

Mr. Andrew Kania (Brampton West, Lib.): Thank you. I am not on this committee, so forgive me if I am missing something, but I'm just going to look at this.

There is a lien here that people keep talking about as one of the major improvements to benefit Canadians. It's section 139. I would like to look at that for a moment. My question or comment is with respect to enforcement.

When I look at this, I don't see any real teeth to make sure this actually works. For example, if there's a vessel that owes money, it's in a Canadian port and it decides it's going to leave, and it gets outside of Canadian waters and never comes back, so what if there was a lien. What you really need is something like section 126 or 128, which refers back to section 139, so that you can, in essence, stop the vessel from leaving. Maybe you have a quick turnaround within 24 hours to get in front of a judge or something like that, but at least you give the Canadians the opportunity to do something about this before the ship just leaves and perhaps never comes back.

Mr. Jerry Rysanek: I am delighted to have this question. That's a legal question, and Mr. Gauthier will take it. He's a lawyer too.

Mr. Mark Gauthier: Thank you very much. The enforcement of this lien, or for that matter any other lien—or for that matter even what we refer to as a statutory action *in rem*, which is something short of a lien but nonetheless a claim against a vessel—is all set out in the Federal Court Act of Canada. There are quite extensive provisions relating to the arrest of vessels.

In my experience—mind you, I practice in the government and not out there arresting vessels, as a rule. Certainly our colleagues in private industry are quick to tell us that the arrest provisions that we have in the Federal Court of Canada are quite bold and aggressive. Arresting a vessel to obtain security I wouldn't say is a formality, but it is the easiest thing. You prepare an affidavit leading to a warrant. You get a warrant, and you have the marshal of the Federal Court serve the vessel. The vessel is immobilized.

Now of course there can be a vessel that seeks cover of dark to flee from any creditor, including, perhaps, a lien holder under this new lien. That can happen, and there's no question that it does. But because of the nature of the lien that is being created here—a maritime lien, which is similar to the other recognized maritime liens in Canada, for example, salvage, unpaid master's wages, and so on, they follow and they track the ship.

So, for example, if that particular vessel ends up anywhere in the U.S., the ship's agent will hire a lawyer in that particular port to arrest the vessel. The vessel will be caught there. If the vessel does not pay up the security required to address the claim, then of course judicial sale can follow, etc. By virtue of being a maritime lien, it's a preferred claim, and it ranks as just about one of the top things to be paid.

We have to concede that a ship can escape under cover of dark, but we understand in practice that it doesn't happen all that frequently. I think the main idea behind having the maritime lien is that in a judicial sale, the claimant ranks very high and is not an unsecured creditor, which normally would rank at the bottom. That is one of the reasons this is being promoted. There is no notion here of somehow amplifying what is already set out in Canadian law when it comes to the enforcement of maritime claims generally.

• (1645)

Mr. Andrew Kania: I don't know anything about the Federal Court process. I've never appeared in Federal Court. What I do know is that when you're talking about obtaining warrants or orders from judges, it takes time—sometimes a long time. If it's a Friday and there are no judges sitting on Saturday or Sunday, you have a problem. If in fact the ship does not go into the United States, where some judge may or may not decide to take jurisdiction in any event, and it goes to a different country, you have troubles.

In my personal view, rather than having no reference or just purely relying upon what may or may not be in the Federal Court rules—I don't know—it would seem to me to make more sense to refer back to something like section 128, which seems quite good and it makes it instantaneous. That would protect Canadians to make sure that these ships don't leave under cover of night or otherwise. I'm not on this committee, and I'm not the expert, but I would think that would be an improvement to this legislation.

The Chair: Thank you.

Monsieur Gaudet.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chair.

I will continue in the same vein as my colleague. I used to work in credit unions and banks. From time to time, some suppliers had liens on buildings. When the bank did not pay up, they were entitled to

take possession of the building, even though the bank or credit union was the mortgage holder.

Mr. Gauthier, page 5 states the following: "Maritime lien for ship suppliers: broad support from industry; some concerns from legal community." You know that many foreign vessels use our country's waters. Sometimes, they sail out to sea, switch flags and return under another name. How will you enforce those liens? That is what I find concerning.

Mr. Mark Gauthier: Mr. Gaudet, I would answer that a maritime lien continues to apply even if there is a transfer of ownership. That is one of the characteristics of a maritime lien. That does not apply to other types of claims. If the maritime lien is legitimate and can be proven valid, whether a vessel is sold during a trip is of little importance. The maritime lien continues to apply to that vessel.

Mr. Roger Gaudet: Are you sure that things would be that easy, even in international waters? The fact that some vessels have to be seized clearly shows that there is a problem.

Mr. Mark Gauthier: I am not saying that it is always easy to do, but I can tell you that the legislation permits it. Of course, a ship has to come to port. It is unlikely that it would be seized on the high seas.

Mr. Roger Gaudet: What are some of the concerns from the legal community?

Mr. Mark Gauthier: According to the Canadian Maritime Law Association, the maritime lien is designed rather broadly in order to protect suppliers. According to them—and I say "them" because they of course represent their clients—it could happen that supplies were not ordered by the ship's owner or agent, but rather by a charterer or someone else. Under those conditions, the ship would be subject to the maritime lien. This is one of our concerns. I also believe, as my colleague Mr. Rysanek indicated, that by introducing a maritime lien for suppliers in Canadian law, we are moving away somewhat from international law, but are closing the gap with the situation in the United States. That is at the heart of most of the problems. At the Port of Montreal, if a ship is put up for sale by order of the Federal Court, American suppliers get paid before everyone else, and Canadian suppliers might not be paid back their receivables. We must re-establish a certain fairness between the situation in Canada and that in the United States.

• (1650)

Mr. Roger Gaudet: That said, I would like to ask you a question about something that has come to mind. At the time of the Exxon Valdez oil spill, off our coasts, why were the persons responsible judged in the United States? It appears that the American justice system takes precedence over the Canadian system to establish our regulations and laws.

Mr. Mark Gauthier: The section we are dealing with is limited to the provision of services to ships. It does not address the issue of pollution, which is already covered by other parts of the act. Mr. Rysanek did refer to that earlier.

I am quite familiar with issues of pollution and would add that if pollutants reach Canadian waters, regardless of their origin, Canadian legislation would apply. I cannot affirm whether or not the Exxon Valdez entered Canadian waters, but I would tend to believe that it did not.

Mr. Roger Gaudet: The Exxon Valdez tragedy occurred in Alaska, in a Canadian zone. Earlier, you yourself, said that the case was heard in the United States. It appears that the settlement was not satisfactory. That is simply an observation.

As for the enforcement of the regulations, will the coast guard be in charge, or will you hire new officers?

[English]

Mr. Jerry Rysanek: It is the ship inspectors as well as the coast guard, particularly the vessel traffic management, which is responsible for verifying the existence and validity of a number of certificates a ship has to have in order to operate in Canadian waters. It will be an added responsibility to verify that they also have their insurance certificate.

Failure to produce an insurance certificate attracts all kinds of penalties, which are set out in the legislation.

[Translation]

Mr. Roger Gaudet: Thank you, Mr. Chair.

[English]

The Chair: Mr. Watson.

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

Thank you to our witnesses for appearing and for the tremendous level of detail in the answers here, so much so that I think I'm now swimming in a lot of detail. Let me just take a few steps back and make sure I understand this.

Let me just start with a general question first, drawing your attention to the slide on page 9, compensation for oil pollution in Canada. Who gets compensated? Is it the Government of Canada, for example, for cleaning up a spill? Is it for businesses that are harmed, say fishermen or others? Is it for communities that are harmed? Who exactly gets compensated by these various funds?

Mr. Jerry Rysanek: There is no limitation on who gets compensated. Compensation is available to both public and private claimants. Public claimants could be governments, civil authorities, and so on. In terms of private claimants, it could be any party that suffered pollution damage, including fishermen. History shows, if I look at some of the international claims, that fishing claims are some of the biggest claims filed for pollution damage.

• (1655)

Mr. Jeff Watson: And all of those claims together can't exceed the limits of the liability. Is that correct?

Mr. Jerry Rysanek: At the moment, where we have legislation today at \$500 million per incident, compared to some of the spectacular cases in Europe, it would not be enough to cover the claims of incidents.

Mr. Jeff Watson: That wasn't the thrust of the question, whether it was enough. What I'm suggesting is that when we set maximum liability, that's supposedly to cover all claims. That's not per claim?

Mr. Jerry Rysanek: It should be enough for all the claims.

Mr. Jeff Watson: Okay. So if I understand it correctly, there are three tiers of coverage under current law for these. There's the International Convention on Civil Liability for Oil Pollution Damage, 1992, correct? That's the ship owners' liability.

Mr. Jerry Rysanek: Yes.

Mr. Jeff Watson: The second is the International Oil Pollution Compensation Funds. Is that also by an international convention in 1992?

Mr. Jerry Rysanek: Yes.

Mr. Jeff Watson: Who administers that, by the way?

Mr. Jerry Rysanek: It's the International Oil Pollution Compensation Funds, which is an organization established in London that has the responsibility, under the convention, to administer and pay claims.

Mr. Jeff Watson: The third one is a domestic fund under Transport Canada, the Ship-Source Oil Pollution Fund?

Mr. Jerry Rysanek: Yes.

Mr. Jeff Watson: Okay. How much is in that fund currently?

Mr. Jerry Rysanek: About \$400 million.

Mr. Jeff Watson: You say that's used to pay Canada's contributions to the International Oil Pollution Compensation Funds. How much to date has been paid into that?

Mr. Jerry Rysanek: Since 1989, when Canada joined, I think we have, up to now, paid close to \$40 million in compensation over the years toward the international fund.

Mr. Jeff Watson: My math is really sour. How much is that per year, roughly, in terms of future obligations?

Mr. Jerry Rysanek: It varies so much, depending on whether claims come into the organization in London. I think one of the largest contributions on an annual basis was paid not too long ago, and it was about \$8 million in that given year because there was a major incident handled by the international fund.

Mr. Jeff Watson: Okay. So what we're seeking to do through the amendments here, with Bill C-7, is to go a step further. This is to ratify our participation in the supplemental fund to the International Oil Pollution Compensation Funds. Is that correct?

Mr. Jerry Rysanek: Yes.

Mr. Jeff Watson: So presumably, the Ship-Source Oil Pollution Fund will be paying out Canada's claims to both the IOPC funds and the supplemental fund to the IOPC. Is that correct?

Mr. Jerry Rysanek: Indeed. If the future experience at the international level involves massive claims that will trigger higher contributions, then of course the contributions paid by Canada by the domestic fund will increase.

Mr. Jeff Watson: On the Ship-Source Oil Pollution Fund, the funds that were in there were based on a levy on fuel oil received. Is that correct? Or on receipts of bulk oil?

Mr. Jerry Rysanek: That's right. It's based on the amount of oil received in the member states of the international fund. That's the measure.

Mr. Jeff Watson: It doesn't sound like that will ever have to be contemplated, or least it doesn't sound likely in the foreseeable future that it would be contemplated again. The fund sounds pretty...

Mr. Jerry Rysanek: So far the fund has managed to lift and finance itself on accrued interest. Hopefully that will continue.

Mr. Jeff Watson: Switching gears for a second here, what laws are in place to prevent oil spills? Now we've talked about what's in place or what we hope to additionally achieve with this bill in terms of the compensation side. Can you talk for a minute about what laws are in place to prevent oil spills from happening in the first place?

Mr. Jerry Rysanek: I'm happy to hand it to my colleague from maritime safety.

Mr. Donald Roussel (Director, Marine Personnel Standards and Pilotage, Department of Transport): Thank you. It's my pleasure to answer that.

There's a series of laws in Canada that prevent pollution. The main one, of course, in Transport is the Canada Shipping Act, and inside the Canada Shipping Act there are specific sections regarding pollution prevention and a series of regulations. We have some regulations on the prevention of pollution but also on the construction of ships and the way they are built so that they protect the environment.

The Arctic Waters Pollution Prevention Act is another one that is present. To name a few, you have the series of acts that are under the privy of the Minister of Environment: the Migratory Birds Convention Act, which deals with prevention of pollution, to name one, and the Canadian Environmental Protection Act, which has aspects to it. Under Fisheries and Oceans there are some other aspects under the Fisheries Act. So it's present in numerous pieces of legislation within the Canadian regime.

• (1700)

Mr. Jeff Watson: Thank you.

Thank you, Mr. Chair.

The Chair: That gives us our first full round. I think I'm going to do just one more round around the table if you have a comment or a question.

Mr. Volpe.

Hon. Joseph Volpe: Thank you very much, Mr. Chair.

Mr. Gauthier, I wonder if we could go back to the question, and now it seems such a long time ago, where I expressed some confusion about the position of some of the passengers on some of these adventure tours. You were at the point, if I recall correctly, where you were explaining to me how the act makes a distinction between a passenger and a participant. I'm still not quite sure that I follow some of the logic that I've heard expressed both by colleagues opposite and even from this side of the table in reaction to some of your responses, so if you'll permit me, we can go back.

An adventure tour operator, I thought I heard you say, is not required to have insurance, and some of the people who might be on his or her ship, boat, etc., are really up the creek without the proverbial paddle in the event of a problem. So are any of the individuals who might be on shore and might be affected by the accident. Is that the impression I should have as a result of your response to those initial questions?

Mr. Mark Gauthier: I think, Mr. Volpe, the impression I would like to leave you with in any event, and perhaps it wasn't conveyed,

was that I didn't actually speak to insurance. Suffice it to say that it's probably worth stating that the operator of such a craft, though not compelled, as Mr. Rysanek has indicated, by law to have insurance, as a prudent operator, probably has some insurance. We understand these amendments will actually pave the way for insurance being available as opposed to insurance not being available under the current regime for the reasons that were also mentioned.

Hon. Joseph Volpe: There's no compulsion in the act—

Mr. Mark Gauthier: That is correct.

Hon. Joseph Volpe: —on any operator to engage in the activity by taking the prudent act first, and that is to ensure that there's insurance on the activity.

Mr. Mark Gauthier: That is correct. That's the first part of the answer. There is no compulsion by law for those operators to have insurance.

The second part that I think I need to mention, though, and perhaps it wasn't too clear, is that leaving insurance aside, it is not as if the operator of such an adventure tourism vessel or series of vessels cannot be made liable in law to compensate the victims of a personal injury or whatever. Of course they could, and they would be at law like any other claimant. They would not have the passenger regime—we've clarified that. They're not in part 4, but that doesn't preclude in any way, shape or form lawsuits being taken against the operator to recover for their damages.

Hon. Joseph Volpe: But that would be more difficult because there's no legal context as, for example, there is legal context under a variety of other acts, as indicated by Mr. Roussel, in order to prevent pollution or at least to attempt to prevent pollution. So in this instance there is no legal context for any action to be brought against an operator of such a craft.

Mr. Mark Gauthier: Well, sir, I would posit that the basis would be negligence. It would have to be the negligence of the operator, that the operator carried out an unsafe operation and, as in any other case when you're trying to assert damages against someone other than where you have strict liability—which you do not have here—you would have to prove your damages. First you have to prove, in tort law, that the operator owed you a duty, that there was a breach of the duty and you suffered damages, as in any other court case. Then the operator would be able to set up his limitation of liability pursuant to part 3 of the act, in the manner in which Mr. Rysanek described.

• (1705)

Hon. Joseph Volpe: I thought I heard you say as well that now we would accept waivers. So a craft operator who is operating a craft that may be unsafe and may be capable of violating the environment would operate to the ignorance of any of the individuals who buy the service. So the onus gets shifted onto the purchaser of the service rather than onto the operator of the craft providing the service.

I don't see how you could establish a case in tort law when you've accepted in law that you waive all rights and privileges associated with an action you've taken when you didn't know that you might have been going into an operator's unsafe craft.

Mr. Mark Gauthier: Well, there, Mr. Volpe, I would leave it to a court to decide, of course, in the circumstances. But there is no doubt that on the facts, it would be permissible to have waivers of liability of some form or description in this type of operation. It's an integral...at least, it has been explained by the industry as being an integral part of the whole sort of operation.

Hon. Joseph Volpe: Has there been another legal opinion rather than simply the industry's perception of convention, as part of your consultation?

Mr. Mark Gauthier: What I recall—and this goes back to perhaps the year 2002 or thereabouts when there were consultations, on the west coast in particular—is that it was the view of the legal community there that these waivers, if they were properly executed, would indeed operate validly and be upheld by a court as proof that the individuals who signed them have voluntarily undertaken the risk associated with the adventure.

Now, I think it's case by case. It would be up to the courts to decide in any given case the manner in which the waivers were established and whether or not they would actually be effective in any given situation, but it is part of the package deal, if I can put it that way, in the legislation. There's no doubt about that.

Hon. Joseph Volpe: Yes. I appreciate your patience with me, Mr. Gauthier.

I guess my question still remains. Someone buys a particular service; that's the package. So one could legitimately say you were getting into this with your eyes open, understanding you're going into an adventure environment that carries certain risks. That's different from somebody buying a service from an operator who is at the same time operating a craft that is in and of itself not safe, and the purchaser of the service, i.e., the adventurer, would probably go in there with the expectation that the craft getting him to that adventure has already met certain standards. However, I don't see any of those standards in the definition here and I don't see that kind of liability permitted.

Mr. Mark Gauthier: Now I understand the angle you're coming from, Mr. Volpe.

Hon. Joseph Volpe: It's a concern for the safety of whoever is going into this activity.

Mr. Mark Gauthier: Right. The reason this is not in the Marine Liability Act is that those rules are set out pursuant to the Canada Shipping Act and the regulations that are made under it. I'll leave Mr. Roussel to explain that part of it.

Mr. Donald Roussel: Mr. Volpe, your assumption is that if this vessel is unsafe, it can still operate. It cannot operate if it is unsafe, and there's a large liability just by virtue of the fact that it would be operating unsafely.

If the operator wants to carry on his business in a reckless way, he will not be in business very long. Either our service will catch up with him because he's doing commercial operations or the court will catch up with him in one way, shape, or form.

Mrs. Guylaine Roy: Let me clarify. The amendment made in 2001 covering the adventure tourism category in fact imposed compulsory insurance on passengers of \$350,000 per person, in case

of an incident. What has happened is that the industry cannot find insurance, so they have a hard time maintaining their business.

We could not, at that time, impose the compulsory insurance provisions that we would like to impose on big commercial activities, such as Marine Atlantic or BC Ferries. By clarifying the situation of adventure tourism, we are able to move to impose the compensatory regime for passengers on commercial entities. That's what we're trying to do, because since 2001 we've seen that the problem of adventure tourism is also creating a problem for our capacity to impose compulsory passenger liability on true passengers.

I just wanted to clarify that.

● (1710)

The Chair: Is there anyone else? Mr. Bevington, are you content?

Okay. Then I will thank our guests for being here today. I've never seen so many brief comments turn into so many long comments, but it has been very informative and we appreciate it. It was very well presented. Thank you very much.

We'll move back to the last piece of business for the day. Maxime is going to pass out the motion that's before us.

While it's being passed out, let me advise committee members—it may or may not deal with this motion—that the minister, because of his absence today due to health reasons, has agreed to be here for the full two hours on Thursday.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I received an e-mail not ten minutes ago advising me that the minister has been ordered bed rest by his doctor. He will not be able to be in attendance Thursday. He's to stay in bed until Friday. He's quite ill, as you probably noticed from question period yesterday, so he will not be able to be in attendance Thursday.

That's where we sit. He's advised that he is more than happy to prepare for an extra meeting next week that he can attend to speak to the main estimates as well as answer questions as necessary.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: The chair just indicated that he would be prepared to be here for a full two hours. Are you suggesting, Mr. Jean, that the minister has already indicated that when he comes next week it is for a two-hour meeting rather than two separate meetings?

Mr. Brian Jean: What I am suggesting is that today we spoke about this particular issue and he said he would be able to be here Thursday for two hours, but I just received a PIN not ten minutes ago advising me that the doctor said he has to stay in bed until Friday for certain and will not be available Thursday, which was going to be a two-hour meeting in which he would be here an hour for main estimates and an hour for other questions.

If I may, since it was quite urgent that I deal with this, I just want to make sure I've got my facts right in relation to next week. This is what I received. Minister Baird is on doctor-ordered bed rest until Friday. He is quite ill. As a result we will be unable to testify at committee on Thursday on either Bill C-7 or main estimates. What we are proposing is that we cancel the next meeting or have a planning meeting, or whatever the committee wishes to do, and reschedule to next week, pushing everything back a week. We are willing to schedule an extra meeting next week, if necessary.

[*Translation*]

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): The goal of my motion today is to invite the minister to speak about infrastructure. I hope that the parties can reach an agreement so that the last meeting of the committee will last for at least two hours, and that the minister of Transport will speak about planned expenditures, Bill C-7 and new infrastructure projects, which is of key concern to Canadians.

• (1715)

[*English*]

That is the basic consensus I'm trying to see, Mr. Chair. We can agree today—and I'd like to seek the will of the committee otherwise—to have our next meeting a two-hour meeting, a meaningful exchange with the minister. He has been busy preparing. We've heard a lot about the preparations for how to get the economic stimulus and other stimulus infrastructure funds out, and I think that is the intent of the motion. I appreciate and I think we all respect that the minister is not well, that there's no way to pin him to a specific date. I hear the willingness from the parliamentary secretary to have flexibility on the minister's part when he is well and able. I'm just wondering if we also have consensus around the idea that we are talking about infrastructure and those related matters from the main estimates as opposed to coming back to Bill C-7 in our next session. I think that behooves what the committee needs to get done, and that's the nature of the motion I'm putting forward, Mr. Chair.

The Chair: More for clarification of the committee members, do we want the minister back to this committee for Bill C-7 or are we satisfied with the officials' comments today? Are we comfortable with that?

Hon. Joseph Volpe: Mr. Chairman, I guess from our side—

The Chair: I have to go in order. I'll let you think about that while we go around.

Mr. Bevington.

Mr. Dennis Bevington: I'm comfortable with Bill C-7. The only thing is this. I would think we might have a briefing from the department on the infrastructure program on Thursday, if it would be possible to actually bring some witnesses from the department forward and get a briefing from them. Then when the minister comes in front of us, we're not asking him details that can be handled by the bureaucrats.

The Chair: Mr. Jean.

Mr. Brian Jean: I think Mr. Laframboise—

The Chair: I have you on the list. I'll go to Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: That is not what is stated in the motion moved by Mr. Kennedy today. His motion calls on the minister to appear for two hours, but it does not specifically state that we will be discussing planned expenditures, Bill C-7 or infrastructure. It calls on the minister's appearance for the full two hours of the meeting. The motion will have to be amended to reflect that.

I agree that we have to discuss infrastructure. As for Bill C-7, I have no other questions to put to the minister. However, if I did have any questions, I would like to be able to raise them with him. I therefore do not object to discussing Bill C-7 for a half-hour at the start of a two-hour meeting. If we wish to talk about planned expenditures, we will have one hour and a half to do so. I have no problem with that.

[*English*]

The Chair: When I read the motion, I too was under the impression that the request was to have the minister here for two hours, as opposed to one hour, regardless of what the content of the discussion was, but again we'll take direction.

Mr. Volpe.

Hon. Joseph Volpe: As far as any member is concerned around the table, they can ask the minister anything they want. We all agreed here on our side from our party that we really wanted the minister here for two hours. That's why I asked Mr. Jean whether in fact the minister was coming here for two hours. If that's what the minister said he was going to do, I think it's mission accomplished. We're interested in a two-hour time slot.

Mr. Brian Jean: Indeed, Mr. Volpe, the minister did say he was prepared to come for two hours.

I would like to, if I may, speak very briefly in relation to the process. This particular motion came forward, and obviously each and every member of this House and committee has the right to do so, but when I had a review of when the minister has appeared, I saw that this is our twelfth meeting today. Is that correct, Mr. Chair? And he has appeared seven times where Mr. Kennedy has asked questions.

On February 12, he appeared for financial priorities of the federal government. On March 5, it was the economic stimulus package, where Mr. Kennedy asked questions. On February 10, it was supplementary estimates; on February 24, Bill C-9; and on March 24, Bill C-3. April 21 was for Bill C-7 and April 23 was main estimates. Those were two that he was going to appear at and was scheduled for except that he was sick.

What I'm suggesting, Mr. Kennedy, is that he has been here every time this committee has requested him to be here. I would suggest to you, sir, and to all members of this committee, that if they simply put the request in during the subcommittee or during the committee itself, he will try everything he possibly can to be here.

It's at just over half of the meetings we have had that he has been available to come forward, and some of them, agreed, are not transport; one was OGGO, another was finance. But indeed, if you have specific questions, and if you would like to have him appear in relation to infrastructure or other matters, certainly just bring it forward and we would be happy to make that request. You have the right to do it any way you wish.

My difficulty with this whole situation is...we've been working well together as a committee—different parties with different views and different priorities, and it's been working extremely well—and I would hate to see that change in any way, shape, or form.

• (1720)

Mr. Gerard Kennedy: I certainly wouldn't want to do or say anything to get in the way of the amicableness or the feelings of goodwill between committee members, but we may share a difference in terms of the relative accountability that's been achieved by the minister in his time here. Most of the time he's been called forward on bills chosen by him and his ministry to appear on.

I think there is a change that I believe is probably shared by everybody on this committee. It is now past April 1; there is new money that's been authorized. There is a new circumstance that this committee has not seen before in terms of the sheer volume of infrastructure moneys that the government intends to put forward. There are new processes and new accountabilities that have been talked about in various motions, and so on. I believe this committee is the only place that is going to be able to come to terms with that. There is no implied disrespect to say that the minister's valuable time is required for more because of that circumstance, that it's not a cursory visiting of those issues, but that we have some time.

What I really am glad to hear from the parliamentary secretary is that we should not see that there's any artificial limitation on the minister's time, that he is prepared to be accountable, as the committee sees fit to put forward, and in fact even as individual members of this committee may feel fit to exercise. I will take that in the spirit in which it's intended. When the minister is better, it sounds like we will have a two-hour discussion. If there are things that are unresolved at that time, then perhaps we can look to further cooperation from the government. I appreciate the implication of that from what the parliamentary secretary is saying. That's certainly what we're seeking.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I want to extend a hand to the other side because I have known Liberal ministers who were much less available than the current Minister of Transport. It must be acknowledged that he has made himself very available. I would like to invite him and ask to meet with him for two hours, if that would be agreeable to him. I repeat, some Liberal ministers were much less available than he has been. If we can meet with him for two hours, all the better. I would like for him to know ahead of time the reasons why we are inviting him, i.e., to discuss planned expenditures for one hour and a half and Bill C-7 for the remaining half hour. If he agrees to that, that would be fine, but I would not want to browbeat him, because he could revert to the habits of the former Liberals. That would complicate things somewhat.

[*English*]

The Chair: *Merci.*

Monsieur Galipeau.

Mr. Royal Galipeau (Ottawa—Orléans, CPC): Mr. Chairman, in the spirit of everything I've heard so far, I wonder if Mr. Kennedy would agree to second a motion from this committee to wish the minister to get well soon.

Mr. Gerard Kennedy: Sir, I'd be happy to *move* that motion.

The Chair: It sounds positive.

Mr. Royal Galipeau: Mr. Chairman, since the motion has been duly moved and seconded—actually, moved and moved—maybe we can call it carried.

The Chair: Are we all in favour?

Some hon. members: Agreed.

Mr. Gerard Kennedy: Same vote for the motion?

The Chair: I'm going to ask about the motion.

Do we want to have a vote on it, or do we want...?

Mr. Volpe.

Hon. Joseph Volpe: You already have consensus that we've accepted the minister's willingness to come before the committee for a couple of hours. I see our Bloc colleagues are in agreement. Government members are giving us assurances that the minister is coming.

As I said earlier on, mission accomplished. We just wish the minister a speedy recovery, and we'll see everybody on Tuesday.

• (1725)

The Chair: What we'll do is we'll express our best wishes to the minister. We'll also make a request for the minister, from this committee, for the two hours that he had been prepared for and had talked about before.

We do need something for Thursday. I guess I look to the committee on that. I do have one more piece of new business, but I'm trying to get this wrapped up first.

Hon. Joseph Volpe: Could we move whatever we had on Tuesday to Thursday? If we can move it up, let's do that.

The Chair: The challenge is to get the witnesses to come in on a day-and-a-half's notice. That's our real problem.

You know what? At the wishes of the group, maybe I'll call a one-hour subcommittee and we'll do a little more future planning. We will have more witnesses for the witness list anyway....

Mr. Jean.

Mr. Brian Jean: I'm wondering, Mr. Chair, if indeed the clerk could make a request to the witnesses to see if they would be prepared to move from Tuesday to Thursday. If that's not possible, then we can have the subcommittee meeting. We can leave it at his discretion in relation to that.

The Chair: Fair enough. All right. Well, then, the notice....

We do have one more piece of new business.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I would like to update you and the committee members on a meeting that took place approximately two weeks ago in Surrey. Attending were concerned citizens and members of Parliament from Fleetwood—Port Kells; Surrey North; South Surrey—White Rock—Cloverdale; myself from Newton—North Delta; and the representative for Delta—Richmond East, John Cummins.

The concern is that around maybe 2007, the flight path to the Vancouver airport was changed. It resulted in a lot of noise in those ridings, particularly in Dona Cadman's and Nina Grewal's.

There's a lot of resentment. I've been receiving hundreds of calls and thousands of e-mails from those fellows. I suggested to them that instead of just talking to us, maybe they should talk to the committee. They were willing to come out as a delegation. I wanted to give this to you as an information item, just so that you're prepared if and when they write to you.

I personally am concerned, as this concern is very general. All of the local political representatives, including mayors, and all the organizations and community groups were there. They had one voice: something has to be done. Of course, they understand that Nav Canada is at arm's length from the transportation ministry.

That's the end. Thank you.

The Chair: Mr. Volpe, then Mr. Laframboise.

Hon. Joseph Volpe: Mr. Chairman, I am tempted to say that even though we accept all of those concerns as legitimate, and of course they should receive the attention of this committee, the members that my colleague mentioned are all members of the government side. I think it would be perhaps best dealt with if it came forward as an item for our future business—I imagine that's what my colleague has done right now—and was discussed then, in future business.

If we're going to go into a steering committee on Thursday, perhaps we could discuss it then. Mr. Dhaliwal and some of the members of the government side might have some suggestions as to how we would proceed along the way.

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal: I'll be sure to provide the information so you can deal with it at your level, however you want.

The Chair: Thank you.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: The noise problem at airports is first and foremost the responsibility of airport authorities. In Montreal, they face the same situation. In fact, on the island of Montreal, there is the same problem at the Montreal-Trudeau Airport. If we call on citizens to appear before the committee to resolve the issue, that could seriously impede our work.

I have no objections to discussing the issue, but the airport authorities are really the only witnesses we can call to appear with regard to the noise issue, in order for them to explain why they made changes to their air paths, etc. Regarding the Montreal-Trudeau Airport, there are petitions with thousands of signatures. If we call on people to appear before the committee, they will all come and tell us that the situation has to change and the airport needs to be shuttered. So that is not an option. We would have to find another way to go about this. We, as committee members, cannot solve the problem, especially since those independent airport authorities were established by the Liberals themselves.

Therefore, we need to study the issue as a committee and see how the problem can be resolved.

• (1730)

[*English*]

The Chair: Thank you.

Mr. Volpe, I was going to summarize the discussion, but I'll give you 20 seconds.

[*Translation*]

Hon. Joseph Volpe: I cannot let my colleague from the Bloc leave without making a comment. He is absolutely correct in saying that the issue is under the purview of the airport authorities. However, nothing prevents us from discussing this as a potential matter of study. Therefore, if a member of the Liberal Party expresses concerns about this issue, then I believe it is quite legitimate for us to discuss this. We might discuss this as future business at our next meeting.

[*English*]

The Chair: Thank you for those warm comments. We will talk to some of our colleagues about the issue and bring it forward at a subcommittee meeting.

Seeing no other comments, the meeting is adjourned.

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