



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 051 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, November 6, 2012

—
Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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•(1145)

[Translation]

The Vice-Chair (Hon. Denis Coderre (Bourassa, Lib.)): Welcome, everyone.

First of all, I would like to thank our witnesses.

We don't have much time because of the vote. So the speeches will not be long. You are mainly going to make your presentations, quickly. Then we will move on to questions, in order to take full advantage of this hour and fifteen minutes. Obviously, I would have liked us to have been able to do this work in more detail, but that is the situation.

Since I am the vice-chair available, I will chair this meeting. I reserve the right to ask a question or two, if I have any. In other words, we are going to follow the usual procedures.

Ms. Leslie, you have the floor.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Before we begin, I would like to ask if it would be possible to have

[English]

unanimous consent to continue for an extra half-hour, in light of the time we lost.

[Translation]

The Vice-Chair (Hon. Denis Coderre): Is that a motion?

Ms. Megan Leslie: Yes.

The Vice-Chair (Hon. Denis Coderre): Therefore, we have this motion. We won't need to discuss it at length.

Do you agree to extend the meeting?

An hon. member: No.

The Vice-Chair (Hon. Denis Coderre): We do not have unanimous consent.

[English]

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I have a point of order.

We had planned to provide an hour for each group of witnesses, but because of the delay I would suggest that we split the remaining time precisely in half, as opposed to shortening the officials' presentations and then continuing with the original timing of the other group of witnesses.

[Translation]

The Vice-Chair (Hon. Denis Coderre): Thank you, Mr. Poilievre. I fully agree with that. We must take maximum advantage of the presence of our guests.

I don't know if you wanted to speak as long as planned, but we are going to divide the time in two. I suggest that everyone make their presentation and, then, we will take the rest of the time to ask questions of any of the witnesses. Is that okay?

Some hon. members: Yes.

The Vice-Chair (Hon. Denis Coderre): We'll start with Ms. Borges, from the Department of Transport.

[English]

Ms. Helena Borges (Assistant Deputy Minister, Programs, Department of Transport): Thank you, ladies and gentlemen.

I will speak to you about the Bridge to Strengthen Trade Act, which would authorize the construction of a new international bridge across the Detroit River between Windsor, Ontario and Detroit, Michigan. It was referenced on page 159 of the budget action plan of 2012, last spring.

The Windsor-Detroit trade corridor is by far the busiest border crossing, handling almost 30% of Canada-U.S. trade and 30% of Canada-US truck traffic. That represents over 7,000 trucks per day. In 2011, Canada-U.S. trade reached \$689 billion. Michigan-Canada trade exceeded \$70 billion. There is no trading partner more important to Canada than the state of Michigan. Canada conducts more trade with Michigan than it does with any other country in the world, except for the United States as a whole.

Presently, 99% of the Windsor-Detroit truck traffic crosses the 83-year-old, four-lane Ambassador Bridge, the only major Ontario-U.S. crossing without direct highway access and without significant redundant capacity for truck traffic. As such, a new bridge is a very high priority for shippers and manufacturers.

[Translation]

Therefore, a new border crossing is necessary. The Government of Canada has been working with Ontario, Michigan and the United States government in the past 10 years to develop the Detroit River international crossing project.

Canada and Michigan signed the agreement on the crossing in June 2012, which was an important step toward the construction of the new public crossing. The agreement shows that the Government of Canada and the Government of Michigan are fully committed to proceeding with the project quickly.

[English]

This project has the support of all major automotive and auto parts manufacturers, including the big three in Detroit, plus Honda and Toyota. It also has the support of all major chambers of commerce in Canada and the United States, as well as the local chambers of commerce in Michigan.

• (1150)

[Translation]

The Vice-Chair (Hon. Denis Coderre): I'm sorry for interrupting, but I hear a telephone ringing, and it isn't mine.

I would ask that you put your cellphones on vibrate.

[English]

All right? Sorry.

Ms. Helena Borges: The crossing also has the support of labour unions in both countries, as well as major manufacturers, including companies like Campbell's Soup, Amway, Kellogg's, Myers, and other firms.

As well, the project has the support of the City of Windsor, the County of Essex, and the City of Detroit, not to mention the legislatures of Ohio and Indiana.

Despite the broad support for this project, its primary opponent has launched several legal challenges against the Government of Canada that are aimed at delaying or stopping the project.

[Translation]

In accordance with the intent of the 2012 budget, the Bridge to Strengthen Trade Act aims to create jobs, increase economic growth and encourage long-term prosperity in Canada, and especially in the two regions most affected by the recent economic difficulties: Windsor and Detroit.

[English]

The project has already undergone a rigorous and coordinated five-year environmental assessment process on both sides of the border and has complied with the laws in Canada and the United States, namely, the Canadian Environmental Assessment Act, the Ontario Environmental Assessment Act, and the U.S. National Environmental Policy Act.

[Translation]

The three governments granted their approval in 2009, by concluding that the project would not harm the environment.

[English]

The environmental assessment decision was also upheld in Federal Court last year after it was challenged and appealed by the opponent of the project. The Federal Court of Canada confirmed that the environmental assessment was properly carried out and that it complied with the Canadian Environmental Assessment Act.

In this context, the Bridge to Strengthen Trade Act will shield the new bridge from existing and future legal challenges of regulatory permitting decisions and administrative approvals required under specific Canadian laws.

[Translation]

Basically, the new legislation will eliminate any possibility of legal challenge by allowing the construction of the project without requiring other permits or authorizations in Canada.

[English]

The legislation is by no means a way to avoid environmental obligations or other regulatory obligations, as it would still require the Government of Canada and the future P3 proponent for the project to meet the commitments made in the federal environmental assessment report, as well as complying with the intent of the obligations under relevant federal legislation pertaining to fish and fish habitat, species at risk, and navigation.

To this end, the bill requires that the plan be filed for each law for which a permit would not be required, explaining in detail all the measures that will be taken to mitigate any adverse environmental effects caused by the project. These commitments also include continued consultations with affected communities in the region, the first nations, and responsible federal departments.

[Translation]

To ensure accountability, the bill includes financial penalties if these obligations are not met. The critical advantage of this legislation is that it makes it possible to assure the P3 bidders that the project will not be delayed because of legal proceedings on the Canadian side and that the crossing will be built without delays or interruptions.

[English]

By introducing and passing this legislation, we will send a strong message to the P3 market. This will no doubt enhance the quality and the number of bids that we receive for this project, which we hope to get under construction shortly.

The legislation also clarifies a number of corporate governance issues and provides some minor amendments to the International Bridges and Tunnels Act, consistent with the crossing agreement that was signed in June, such as confirming the crown's authority to establish a corporation to implement the project both in Canada and the United States, authority for that corporation to establish tolls and other charges for the use of the bridge, and to charge tolls under a P3 arrangement.

With this act, we are taking the necessary steps to ensure the timely implementation of this project in light of its importance to the long-term economic prosperity of both Canada and the United States in general, and of the Windsor–Detroit region in particular.

Thank you, Mr. Chair.

[Translation]

The Vice-Chair (Hon. Denis Coderre): There is still a bit of time left. Does anyone else want to speak? It doesn't seem so.

[English]

We will start with Madam Leslie.

Ms. Megan Leslie: Thanks very much.

Thank you very much to the witnesses for appearing today. We have lots and lots of questions. I'm hoping we'll be able to get through as many as possible.

To begin, I'm relying on different reports saying how many lakes and rivers there are in Canada. Is your department actually able to give us firm numbers on that?

• (1155)

Mr. Nathan Gorall (Director General, Navigable Waters Protection Task Force, Department of Transport): No, we're not, and it's because such a list doesn't exist. I think if you were to go to Natural Resources Canada, they would not be able to define for you every single body of water in the country.

Ms. Megan Leslie: So you wouldn't even be relying on provincial data for that?

Mr. Nathan Gorall: We do have plenty of statistics about Canada's busiest waterways.

Ms. Megan Leslie: I want to ask some questions about the criteria being used to define which lakes are protected and which won't be. First of all, can you elaborate on the precise criteria that is used or that was used to determine which waterways qualify to be included on schedule 2 of this new act?

Mr. Nathan Gorall: I'm going to hand it over to my colleague Sébastien Belanger in one second.

I do want to make a quick point. It's with respect to the language that we've heard quite often in the public domain with respect to protected waterways. From my perspective, that is an overused expression, in the sense that protection of a waterway seems to imply that we are abandoning waters, when in fact there is plenty of environmental legislation that will protect the quality of the drinking water and the environment of the water. There is the Species at Risk Act, which will continue to protect the environment and the users of the waterway.

I want to make a quick point for clarification that there are listed waterways in the bill and then there are unlisted waterways. From our perspective, it's not protected versus unprotected.

I'm going to turn it over to Sébastien, who's going to walk us through the criteria. Thank you.

Mr. Sébastien Belanger (Marine Safety Policy Advisor, Department of Transport): We used four data sets that could be found across the country. That was one of the biggest challenges: finding the navigation data for both commercial and recreational traffic such that it could be comprehensive.

The first one we used was a CHS score, which was generated by analyzing the Canadian Hydrographic Service's nautical charts, specifically their level of service, which is based on risk that is highly correlated not only to the volume of traffic in the waterways but also to the demand by mariners, both commercial and recreational, on their charts.

Another key indicator we used was freight score, which is a very strong indicator of commercial navigation across the country. That data was garnered from Statistics Canada with help from the CBSA and others.

Then we used a navigation work score. The navigable waters protection program, for decades and beyond, has been providing building permits for infrastructure in and around Canadian waters. Within the databases that are used to track those applications, we were able to query the infrastructure that is there to support recreational and commercial navigation, marinas, wharves—

Ms. Megan Leslie: Mr. Belanger, if I may...I only have seven minutes. What's the final piece?

Mr. Sébastien Belanger: The last one is a survey score that was used. In discussion...it was a survey with our regional officers and our managers, who have been spending decades working both with users and with builders in the waterways.

Ms. Megan Leslie: If I take what you're saying and I think about Manitoba, for example, Manitoba probably has over a hundred thousand lakes. Only three are going to be protected—and I'm using that word specifically—under this new act.

What specific criteria would have been used, for example, with regard to Rainy Lake deserving protection over Cedar Lake? Because Rainy Lake is this tiny little lake, and Cedar Lake is a major... I mean, if you're talking navigation, I don't understand how a little lake could be protected whereas a major waterway wouldn't be.

Mr. Nathan Gorall: I would argue, if I may, that the issue around us using the most up-to-date data that is available to us, both publicly and within the department... It was used to evaluate navigation patterns and traffic, so the size of the water body is relatively irrelevant, based on the statistics of whether or not it's heavily navigated.

I'll give you a very specific example. If you look at the waterways that make up the Trent-Severn Waterway, you'll see that it's a series of 43 different lakes and rivers, all very tiny if you look at a map of Canada. But with respect to the amount of traffic that goes on there and the level of charts that cover those waterways, they are clearly among Canada's busiest waterways, whereas there are some lakes in northern Quebec where there's very little navigation, if any.

• (1200)

Ms. Megan Leslie: Thank you very much.

I'll ask a question for which I'd actually like the answer tabled, if that's possible. Would you be able to provide the committee with copies of any studies that were conducted in the development of this policy? It is a voluntary undertaking, but I'd ask that you provide that to us.

It's my belief that this is going to end up with litigation, right? People are going to try to assert their rights through the courts because they don't have the regulatory framework to turn to. Have you done an estimation of the cost to the taxpayer of taking on these cases where people are going to try to uphold their common law rights to navigation? Have you costed that out?

Mr. Nathan Gorall: We have had discussions with the Department of Justice on exactly this. We've met with provincial and territorial governments, all 13, and shared with them both the list of waterways and the concept. It did not become an issue—or it did not become an issue there. There is a lot of case law already on the books with respect to public nuisance, private nuisance, and the common law right to navigation.

To respond directly to the question of the cost to the taxpayer, I think what we are doing is creating a more efficient regime for the taxpayer, and we are allowing neighbour disputes, in many instances, to settle themselves in torts.

Ms. Megan Leslie: Have you made an estimate? Have you performed an estimate of what the cost will be of these court cases?

Mr. Nathan Gorall: We'd do that on a case-by-case basis.

The Vice-Chair (Hon. Denis Coderre): Your time is up.

Ms. Megan Leslie: Thank you, Mr. Chair.

The Vice-Chair (Hon. Denis Coderre): Thank you very much.

I would like to have maybe two questions.

First of all, you spoke a lot about accountability, especially with public-private partnerships.

[Translation]

I have a question. We are obviously very wary, and we want to ensure that accountability measures are in place with respect to carrying out contracts. We want to make sure that taxpayers' money is being spent properly.

Is your internal audit currently sufficient to ensure there is no abuse, collusion or corruption? Are you going to put in place new measures to ensure that the taxpayers' money is spent properly?

Ms. Helena Borges: Thank you, Mr. Chair.

[English]

I will answer in English.

Numerous procedures that have been introduced by the Minister of Public Works and Government Services already exist. We will follow all those measures that are currently in place. We will also follow the measures that are part of the Government of Canada contracting policy, Treasury Board policies, and the measures that we are obligated to comply with under international trade agreements.

We are very confident that in the market in which we are going to be launching this project there have been no issues or concerns about collusion in that area. In fact, the Province of Ontario is already constructing the parkway that will connect to this new crossing, and they went out for a request for proposals two years ago. They had significant bids at the expression of qualifications, and three bidders ended up bidding on the request for proposals. That project is currently under way.

Most of the bidders in the public-private partnerships tend to be fairly large international consortia that then are compiled with local construction firms to do the work.

[Translation]

The Vice-Chair (Hon. Denis Coderre): In other words, you will let this work be done, and then you will audit.

Can you audit along the way? Is there any time planned for audits?

Ms. Helena Borges: In fact, as soon as the bidding process begins, we include in the proposal clauses indicating each qualification that we require from companies. When we review the proposals, we see all this and we look at whether these companies have any legal problems or things like that.

The Vice-Chair (Hon. Denis Coderre): You check the backgrounds. You check the companies that are submitting bids.

Ms. Helena Borges: This is our approach, basically.

The Vice-Chair (Hon. Denis Coderre): So, in your opinion, the current measures are sufficient. You don't need to add any others.

Ms. Helena Borges: That's right.

● (1205)

[English]

The Vice-Chair (Hon. Denis Coderre): Mr. Gorall, you said that you consulted the provinces and the territories regarding the Navigable Waters Protection Act. Do you have, on paper, something to show that everybody provided some report that the new wording changes are sufficient and that everybody was pleased with the way the government proposed it?

Mr. Nathan Gorall: I can speak to the discussions that we had with provinces and territories. There were some provinces and territories that were represented by multiple departments. Others were represented by a single department and would then go back and consult with their colleagues across the government. Some provinces wrote in their support at an officials level, and some did at an elected level, for what we are proposing.

I can tell you that we were well received. They had been asking for these changes for a number of years. They represent municipalities that also have been asking for these changes for a number of years. With respect to a particular political position of a government in any of the 13 jurisdictions, I'd defer to them to speak for themselves.

The Vice-Chair (Hon. Denis Coderre): I don't want you to answer politically.

I'm wondering about the kind of situation you witnessed in which people didn't feel *à l'aise*. Was there anything...? Did they send you back to do your homework? Not at the political level, but were there any kinds of issues that made you feel you needed to make some changes after those consultations?

Mr. Nathan Gorall: The most commonly used expression—and not hyperbole—about it was that it was a return to common sense.

You have to keep in mind that back in 1992, for the first time, following a Supreme Court decision, we were required to do permits for municipal and provincial governments, not just for industry and private citizens, so there was a feeling that this was a move towards common sense, that it made sense.

With respect specifically to the waterways listed, again, I don't want to speak for any provincial government. I will say that at an officials level, the only pushback we got on the list of waterways, from a couple of provinces that will remain unnamed, was that perhaps the list was too long.

The Vice-Chair (Hon. Denis Coderre): I do believe in common sense and no red tape. You usually call that smart regulation. Do we have an ongoing process to adapt ourselves? You already said that you have some reports regarding litigation or future litigation.

Sometimes it's better to prevent. Do you have that kind of body where people can, on an ongoing basis, discuss something else, or did you already have that conference with all the provinces, territories, and departments?

Mr. Nathan Gorall: No, and I appreciate that question. It actually allows me to elaborate a little bit on the earlier question.

There is an understanding that we are moving to a new regime and that there are going to be a lot of changes. We don't have it completely 100% mapped out at this point. What we do have is a lot of support from our stakeholders, from what the bill describes... What we plan on doing as we move to a different regime is to create a series of different publications for public consumption, to describe for builders what their obligations are around protecting the common law, and also what the rights are for boaters. Boaters and builders have been operating in shared waterways for centuries, long before this act came into force in 1882, and they will be long after these amendments are changed by another set of amendments.

We do have a bunch of material that we're going to publish. Our officers are not going away in the short term. They're going to be there to respond to questions in listed waterways or in unlisted waterways.

I have two quick last points. One is that there is a provision for builders to opt in, if they are going to infringe on the common law. It does create some certainty for both builders and boaters. There is an opt-in provision in the bill. The second is that the list of waterways is a schedule to the act. It can be amended in the future by a Governor in Council, by order in council regulation.

[Translation]

The Vice-Chair (Hon. Denis Coderre): So, changes can be made by order.

Mr. Poilievre, you have the floor.

[English]

Mr. Pierre Poilievre: The point of contention in the Navigable Waters Protection Act is found in division 18 of part 4 of Bill C-45. Is that correct?

Mr. Nathan Gorall: Sure.

Mr. Pierre Poilievre: I'll hereafter refer to that as division 18. Before we discuss amendments to the Navigable Waters Protection Act, let's discuss the act itself.

Can you point to the section in the act where the word "environment" is mentioned now?

• (1210)

Mr. Nathan Gorall: With respect to the bill?

Mr. Pierre Poilievre: No, in the existing Navigable Waters Protection Act.

Mr. Nathan Gorall: It doesn't exist in the existing act.

Mr. Pierre Poilievre: The word "wildlife": where does it exist in the existing Navigable Waters Protection Act?

Mr. Nathan Gorall: It does not.

Mr. Pierre Poilievre: The word "ecology": where does it exist in the existing Navigable Waters Protection Act?

Mr. Nathan Gorall: I haven't seen it.

Mr. Pierre Poilievre: The word "nature": where does it exist in the Navigable Waters Protection Act?

Mr. Nathan Gorall: I'm hearing "no" from my legal counsel.

Mr. Pierre Poilievre: The word "habitat": where does it exist in the current Navigable Waters Protection Act?

Mr. Nathan Gorall: It does not.

Mr. Pierre Poilievre: We've been told that it is an environmental law. Why would it not contain any of those words if it were an environmental law?

Mr. Nathan Gorall: Well, I'll leave it at this. I think the changes that were made in the summer of 2012 removed—

Mr. Pierre Poilievre: I just want to zero in on the existing act as it is today, and the changes that are proposed in division 18. If we look at the act right now, is it currently an environmental act?

Mr. Nathan Gorall: No, it's not.

Mr. Pierre Poilievre: There are other acts, however, that do protect the environment. They include the Canadian Environmental Protection Act, the Fisheries Act, the Migratory Birds Convention Act, and the Species at Risk Act. Will those acts continue to protect nature after this Bill C-45 is passed?

Mr. Nathan Gorall: I can't speak for the other acts and for the other departments. I can only speak to navigation.

Mr. Pierre Poilievre: On division 18 of Bill C-45, what amendments does it bring for the Canadian Environmental Protection Act?

Mr. Nathan Gorall: Sorry—could you repeat that?

Mr. Pierre Poilievre: Division 18 of the existing Bill C-45: that's where the Navigable Waters Protection Act is described and amended. Does that division amend the Canadian Environmental Protection Act?

Mr. Nathan Gorall: No, it does not.

Mr. Pierre Poilievre: Does it amend the Fisheries Act?

Mr. Nathan Gorall: No.

Mr. Pierre Poilievre: Other than name changes...?

Ms. Ekaterina Ohandjanian (Legal Counsel, Department of Justice, Department of Transport): No.

Mr. Pierre Poilievre: Does it amend the Migratory Birds Convention Act?

Mr. Nathan Gorall: No.

Mr. Pierre Poilievre: Does it amend the Species at Risk Act?

Mr. Nathan Gorall: No.

Mr. Pierre Poilievre: Ms. Leslie said that there were only three bodies of water that would be, in her words, “protected” after Bill C-45 is adopted.

Is there anything in division 18 of Bill C-45 that would remove protections under the Species at Risk Act, the Migratory Birds Convention Act, the Fisheries Act, or the Canadian Environmental Protection Act from the other bodies of water in Manitoba?

Mr. Nathan Gorall: No.

Mr. Pierre Poilievre: All right. So it is not true to suggest that there will only be three bodies of water protected in Manitoba...?

Mr. Nathan Gorall: Again, I take exception to the description of “protected”. There are listed waterways in Manitoba and unlisted waterways.

Mr. Pierre Poilievre: Does that have no bearing on the applicability of environmental laws and their protections of waterways in, for example, Manitoba?

Mr. Nathan Gorall: Not federally or provincially, no.

Mr. Pierre Poilievre: Right: so will these waterways still have the same protections under environmental law as they did prior to the passage of division 18?

Mr. Nathan Gorall: Yes. If these amendments do not go forward, nothing's going to impact the changes to the environment act.

Mr. Pierre Poilievre: And if the amendments do go forward...?

Mr. Nathan Gorall: Again, nothing will impact the changes to environment.

Mr. Pierre Poilievre: These amendments have precisely nothing to do with the environment.

Now, on the issue of provincial consultations, are the provinces aware of the list of waterways that will be covered under the schedule that Bill C-45 brings into place?

Mr. Nathan Gorall: They are aware. I just want to clarify that I wouldn't categorize them as consultations; I would categorize them as in-depth discussions.

Mr. Pierre Poilievre: So are they aware, though, of the waterways that are listed in the schedule of the new act?

Mr. Nathan Gorall: They are indeed.

Mr. Pierre Poilievre: Did they at any time specify that there were waterways that were not included that ought to be?

Mr. Nathan Gorall: Again, I don't want to speak about the individual provinces. We did have questions clarifying why were some listed and not others. We described the criteria for them, as my colleague did earlier during this session, and for the most part—

• (1215)

Mr. Pierre Poilievre: Have any provinces said that there are waterways missing from the schedule that's in the existing bill?

Mr. Nathan Gorall: No. Conversely, there were some provinces that said that perhaps too many were listed.

Mr. Pierre Poilievre: So the only criticism that we've had from our provincial counterparts on the list itself is that it is perhaps too exhaustive?

Mr. Nathan Gorall: Again, from a couple of the provinces, yes.

Mr. Pierre Poilievre: But none have come to you and said there aren't enough waterways included?

Mr. Nathan Gorall: Not to me personally, no.

Mr. Pierre Poilievre: Okay.

Can you tell me, under the existing Navigable Waters Protection Act, what is the definition of a “navigable water”?

Ms. Ekaterina Ohandjanian: The definition is really pointing to the common law, so it has to have all the elements that our common law typically uses to define “navigable water”. That would mean that it's not a depth issue; it's more one of access by the public, it's used for recreational and commercial purposes—

Mr. Pierre Poilievre: Are you talking about under the bill or under the act?

Ms. Ekaterina Ohandjanian: In both cases.

Mr. Pierre Poilievre: Okay.

I've heard stories of Transport officials literally using a canoe to determine if a waterway could be navigated. Is that related in any way to the definition?

Ms. Ekaterina Ohandjanian: This is one component that leads you to a definition of whether a water is navigable water within the meaning of the common law. It's a navigability issue that you're referring to, and that's based on principles established by an Ontario case called the Coleman case.

[Translation]

The Vice-Chair (Hon. Denis Coderre): Thank you very much.

Mr. Watson, you are the last speaker.

[English]

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

Thank you to our witnesses for appearing.

I want to focus a little bit more on the Bridge to Strengthen Trade Act. This relates, of course, to the next step around the DRIC process, the DRIC being the Detroit River International Crossing, or the proposal to build an international bridge between Windsor, Ontario and Detroit, Michigan. The current corridor supports a lot of economic activity. I think the current bridge span, which is four lanes wide, two in each direction, supports about \$1 million per minute in two-way trade.

Briefly, Ms. Borges, can you explain why the project is important in terms of economic security and national security?

Ms. Helena Borges: Yes, with pleasure.

Just to reconfirm some of the figures you mentioned, every day 400,000 people cross at this crossing, and that's almost \$2-billion worth of goods and services crossing at Windsor-Detroit on a daily basis. On an annual basis, this corridor handles almost 30% of all surface trade between Canada and the United States. It supports hundreds of thousands of jobs, not only in Ontario but also in numerous states across the United States.

Mr. Jeff Watson: I raised the issue of national security in terms of a redundant downriver crossing. DRIC arises from a long binational process begun post-9/11 to address issues like border gridlock. In the aftermath of 9/11, I was working on the assembly line at Chrysler. The Pillette Road Truck Assembly Plant was shut down within days because the border was shut down. They were ferrying limited supplies of car parts across the river for as long as they could.

I believe this binational process examined 18 possible corridors for a crossing. Is that correct?

Ms. Helena Borges: The process examined 15 corridors—

Mr. Jeff Watson: Fifteen? Okay.

Ms. Helena Borges: —between what we'll call southwestern Ontario and to the south, east, and north of Detroit. We narrowed it down to three options in the vicinity of where the bridge is going to be located now. That was following the environmental approval processes in both Canada and the U.S.

In terms—

Mr. Jeff Watson: The environmental assessment was conducted and concluded. Correct?

Ms. Helena Borges: It was concluded and approved, yes.

Mr. Jeff Watson: In June of this year we had an agreement between Canada and Michigan to move forward on a P3 to link, more specifically, the communities of Delray on the Michigan side and the Brighton Beach area of the City of Windsor.

Before I get to the Bridge to Strengthen Trade Act, this binational process has encountered numerous legal challenges along the way. Can you tell us how many, first of all, and how many NAFTA challenges have been launched against the binational process and the DRIC?

Ms. Helena Borges: I'll just mention the numbers against Canada, those that involve Canada directly. We had, up until last year, eight challenges in total: six legal challenges and two trade challenges. At present we are still defending the two trade challenges and three ongoing legal challenges, for a total of five.

• (1220)

Mr. Jeff Watson: Who is primarily behind these legal challenges?

Ms. Helena Borges: Except under the previous eight, where we had one environmental group on the environmental assessment, all of them have been launched by the owners of the Ambassador Bridge—

Mr. Jeff Watson: An American who is on the *Forbes* list of billionaires and who has a virtual monopoly over the truck crossing....

I'm asking you to characterize this. Were these legal challenges intended to ensure that the DRIC was to proceed to its completion in

compliance with Canadian laws, or were they intended to delay or eliminate the DRIC from competition with this monopoly?

Ms. Helena Borges: They definitely are not meant to speed up the project, that's for sure. Most of them are aimed at stopping or delaying the project, and that's why we are defending them so vigorously.

Mr. Jeff Watson: A P3 bidder who wants to construct this bridge has to consider many variables. The legal certainty or uncertainty around a project moving forward is one of those variables. Is that correct?

Ms. Helena Borges: It's a huge variable. When we consult with the P3 market, they ask us to address certain conditions: to ensure that we have the environmental assessments completed, that we have acquired all the properties that are required for a project, and that all the risks related to the project moving ahead—any legal uncertainties or approvals required, such as approvals, permits, and those kinds of things—be in hand as well. This is what we're trying to—

Mr. Jeff Watson: Permits approvals are the basis points, if you will, for seeking judicial review to either delay or eliminate the DRIC bridge. Is that correct?

Ms. Helena Borges: That's correct. Any approval that's given by a federal agency can be challenged in Federal Court for judicial—

Mr. Jeff Watson: The Bridge to Strengthen Trade Act removes those, thereby removing the basis for judicial review challenges, leaving a constitutional challenge as the only real challenge against the bill itself, if this bill is passed. Is that correct?

Ms. Helena Borges: Under this law, yes, it's for the environmental—

Mr. Jeff Watson: You said that the EA has already been conducted. How does the Bridge to Strengthen Trade Act ensure compliance? What parts of the act...?

Ms. Helena Borges: There are several portions in the act, several clauses, that refer to a plan having to be filed under the Fisheries Act, the Species at Risk Act, the Canadian Environmental Assessment Act, and the Navigable Waters Protection Act.

Mr. Jeff Watson: Clauses 7 through 12: is that correct?

Ms. Helena Borges: Correct.

Mr. Jeff Watson: Michigan Governor Rick Snyder's reaction to the introduction of the Bridge to Strengthen Trade Act was that he was calling for a similar bill on the U.S. side. Is that correct?

Ms. Helena Borges: He was. He would like to be able to have that kind of flexibility on the U.S. side.

Mr. Jeff Watson: Are you satisfied that by removing the process points that are the basis for judicial review, this bill sufficiently, or very comprehensively, I should say, insulates the DRIC from these types of nuisance lawsuits that we have already encountered?

Ms. Helena Borges: Yes. We are trying to provide as much certainty as possible to the P3 market that, as the project moves forward to construction, these are the permits that are required to proceed with construction. By having this bill passed, that certainty will be provided to them, and there will be no mechanism for appealing a decision.

[*Translation*]

The Vice-Chair (Hon. Denis Coderre): Ms. Borges, Mr. Gorall, I would like to thank you, as well as the other witnesses.

We will suspend the meeting for a few moments to allow the other witnesses to arrive. Thank you for sharing your thoughts with us.

•(1220) _____ (Pause) _____

•(1225)

The Vice-Chair (Hon. Denis Coderre): We are starting the second part of our meeting.

[*English*]

Thank you very much.

We have with us Mr. Marit, from the Saskatchewan Association of Rural Municipalities.

Welcome, Mr. Marit.

We have, on video conference, Mr. Tony Maas, from the World Wildlife Fund of Canada.

Also, we have with us Mayor Eddie Francis, from the Municipality of Windsor.

Gentlemen, thank you very much. We have the capacity for 10 minutes for each of you. Because of the timeframe, I would urge you to be more specific so you can answer more questions.

We will start with Mr. Marit, for 10 minutes.

Mr. David Marit (President, Saskatchewan Association of Rural Municipalities): Thank you, Mr. Chair.

My name is David Marit. I'm president of the Saskatchewan Association of Rural Municipalities, and first of all I would like to thank the committee for inviting us here to present our views on the Navigable Waters Protection Act.

SARM represents all 296 rural municipalities in Saskatchewan and allows us to act with a common voice for all of rural Saskatchewan. SARM serves as the principal advocate in representing the municipal governments of the province on priority issues, including changes to the Navigable Waters Protection Act being proposed through Bill C-45. We are encouraged that Bill C-45 proposes to rename this act the Navigation Protection Act and appropriately refocus the legislation.

The Navigable Waters Protection Act was enacted in 1882 and is creating unnecessary obstacles that are preventing municipalities in Saskatchewan from building cost-effective transportation infrastructure. SARM believes the act needs to be updated to recognize that a significant amount of water transportation on lakes and rivers today is recreational in nature. It is no longer a common means of everyday transportation of goods and people, as it may have been in 1882, when the act was created.

As a result, the existing legislation has become outdated and an unnecessary obstacle to the transportation of those very same goods and people. As currently written, the Navigable Waters Protection Act applies to a very diverse set of waters, including everything from oceans to farmers' ditches. The result is that municipalities in Saskatchewan are often forced to spend time and money to build infrastructure that responds to requirements to accommodate non-existing public water travel. In many cases, this means that municipalities are required to install abnormally large culverts or bridge structures where roads cross water, and they must be large enough for a canoe to pass through.

An example I would like to share with you comes from the Rural Municipality of Insinger in Saskatchewan regarding a bridge replacement project on the Whitesand River. In January 2005 the rural municipality applied to Transport Canada to build a structure to cross the river. In April of that year, Transport Canada determined that the waterway was navigable. This determination was made in spite of the fact that the stream bed was blocked by beaver dams, rocks, and brush, and no one living in the area could recall a canoe ever attempting to travel the waterway.

In July Transport Canada advised the rural municipality that their proposed design for two 2,700-millimetre and one 3,000-millimetre culverts for a total cost of \$125,000 did not meet the minimum clearance requirements to accommodate navigation. The RM was also advised that it would need to install a multi-plate culvert that would cost the taxpayers of the rural municipality over \$400,000.

To avoid this substantial cost increase, the rural municipality attempted to prove to Transport Canada that the river was not navigable by sending them 56 pictures of barriers to navigation along the Whitesand River. This visible evidence that the stream was not navigable made no impact, and Transport Canada upheld their earlier decision. The RM's hands were tied. The RM then approached SARM in December 2005 to work with Transport Canada for their approval. In February 2006, after many meetings and phone calls, Transport Canada agreed to approve the original three-culvert design. This approval came more than a year after the RM's initial application. This is just one example of many.

SARM believes that the proposed amendments to the act included in Bill C-45 should help mitigate situations such as the one I have just described. The new Navigation Protection Act will clearly list major waterways for which regulatory approval is required for construction projects. It will also allow proponents of construction projects in unlisted waters, such as the Whitesand River, to proceed without approval by the federal government. The list will provide much-needed clarity to municipalities and their residents across Canada.

For years, SARM has been advocating for this distinction, as Saskatchewan municipalities have, for far too long, been required to install larger culverts and bridges to accommodate the passage of canoes and other watercraft, whether it was on a significant navigation route or not. SARM does believe that waters that are used for navigation should continue to be protected and believes the act will do just that. The waterways will all be protected under existing acts.

I will conclude by saying that roads and bridges are the lifeline for commerce and prosperity in Saskatchewan rural municipalities. Removing unnecessary requirements such as those imposed by the current Navigable Waters Protection Act will help ensure that much-needed repair and replacement of the rural road network is done in a timely manner and without unnecessary additional costs. This in turn will help ensure that rural businesses in Saskatchewan remain in their communities and prosper, which of course creates positive economic spinoffs for those communities and for all levels of government.

SARM thanks and supports the federal government for the amendments they are proposing to the Navigable Waters Protection Act as a result of the benefits these amendments will provide to our municipalities.

• (1230)

Once again, I want to thank you for this opportunity to appear today. I'll be pleased to answer any questions.

Thank you.

[*Translation*]

The Vice-Chair (Hon. Denis Coderre): Thank you very much, Mr. Marit.

Since we have less than half an hour left, I would ask our colleagues to prepare short questions. I will not have any questions myself. So we could divide this in two.

Mr. Maas and Mr. Francis, could you please be as brief as possible so that we can ask you some questions?

[*English*]

Mr. Maas, it's your turn.

Mr. Tony Maas (Director, Freshwater Program, World Wildlife Fund (Canada)): Thank you, Chair.

My name is Tony Maas. I direct the freshwater program for WWF-Canada. We are one of Canada's oldest and largest conservation organizations. We have staff and offices across the country. In our 40-plus years working in Canada, we have partnered often with governments, business and industry, and others in the not-for-profit sector to protect ecosystems and sustainably manage natural resources.

I am going to limit my comments today to issues related to the changes to the Navigable Waters Protection Act included in Bill C-45. For reference, that is clauses 316 to 350.

I want to start by saying that I do believe there are some positive amendments to the Navigable Waters Protection Act proposed in Bill C-45—for example, prohibiting dewatering of any navigable water, and relating to new enforcement mechanisms—but it is my opinion that the positives are quite limited. Overall, I believe, the proposed changes to the act are likely to result in negative consequences for navigation, for people, and for the waters that make navigation possible.

Let me just give you three specific concerns. I'll shorten my presentation a bit, just to allow time for questions.

The first, which we've heard some conversation about already, is the separation of navigation from the health of the aquatic environment. That Canadians depend today—often unknowingly—on the protection of navigation rights as a means for protecting the health of our rivers and lakes is really, in my view, a simple reflection of a natural fact: the two are inseparable.

Picking navigation apart from the waters that enable it is very much artificial. The two are part of a bigger whole. Their separation is as artificial as thinking you can protect a fish without protecting its habitat—the waters in which it lives—or suggesting that our economy and the sustainability of the natural resources our environment provides are unrelated or inseparable.

I do have some concerns in this respect—that the changes to the Navigable Waters Protection Act proposed in Bill C-45 may leave unforeseen gaps in environmental protections when piled on top of the changes proposed in Bill C-38, in particular changes to the Fisheries Act. The provinces and territories may lack the capacity, including the financial, technical, and human resources, to effectively protect aquatic ecosystems.

More importantly, I think, my deeper concern is what this means inevitably for the health of ecosystems and people. What I am still not quite clear on is if these gaps have been assessed by the federal government, and, if gaps exist, how they are working with provinces and territories to address them.

The second point I would like to raise is the narrowing of the geographical scope of the act to those waters listed in schedule 2 of Bill C-45. Limiting the scope of the act to the country's so-called most significant waterways stands to leave, in my view, a pretty significant gap in protections for navigation and, yes, for the environment in most of the nation's waters. I'm confident in suggesting that most if not all the waters not listed in schedule 2 are frequented by navigators of some sort.

The St. John River in New Brunswick, where we at WWF have an active project, is a case in point. According to schedule 2 of Bill C-45, only the portion of the river that runs from below the Mactaquac dam to the Atlantic Ocean is currently deemed significant for navigation. I can attest that there's certainly navigation upstream of that dam, despite the barrier it presents. There are tourists and recreational fishers who keep houseboat operators and marina owners in business. We are helping send a group of youth down the river by canoe next summer.

All of this, of course, depends quite clearly on the protection of navigation in the waters upstream and downstream of the dam.

• (1235)

The Vice-Chair (Hon. Denis Coderre): Mr. Maas, perhaps you could slow down. I feel for the interpreters.

Mr. Tony Maas: Sorry—most certainly.

The Vice-Chair (Hon. Denis Coderre): Thank you.

Mr. Tony Maas: I'll just pick up my final point and slow down. I do only have a couple of minutes left.

The third point is that I'm deeply concerned that Canadians are being told, not asked, if their waters are significant.

I am a believer in participatory democracy. While I appreciate the opportunity to speak to the committee today, I do not claim to be, and should not be considered, a representative voice for conservation organizations or for others whose navigation rights and waters may be negatively impacted by the changes in the proposed bill.

Groups like the Waterloo-Wellington Canoe Club, who I met with just last week, would have a strong interest in these changes, but they may not even be aware of them. I think the same can be said for the business owners and recreationalists on the St. John River, which I mentioned earlier.

In closing, I would like to just make it clear that I do believe that changes to how the Navigable Waters Protection Act is administered are worthy grounds for discussion. Can the implementation of the act be made more effective, more efficient? Very likely. I have suggested the same before committees studying Bill C-38 on reforms to the Fisheries Act. But I do not believe that the reforms proposed in Bill C-45, and the approach to making them, will result in the best legal and policy framework for maintaining the navigation rights of Canadians while also protecting the waters on which those rights depend.

Thank you so much.

[Translation]

The Vice-Chair (Hon. Denis Coderre): Thank you very much for your understanding, Mr. Maas.

I will now turn the floor over to the mayor of Windsor, Mr. Francis.

[English]

Welcome, Mr. Francis.

The floor is yours.

Mr. Eddie Francis (Mayor, Municipality of Windsor): Thank you, Mr. Chair, and good afternoon. Cognizant of time, I'll keep my statements brief.

I appear before you today in support of the Bridge to Strengthen Trade Act. As you and the committee members are well aware, Mr. Chair, the main objective of this legislation is to ensure the successful and timely construction of the Detroit River International Crossing project, in that this legislation will allow us to bring certainty to the P3 market and to the private sector for the construction of this project through the terms that have been articulated.

This is the single most important project and it is an economic lifeline. As you heard earlier, 30% of all surface trade between Canada and the U.S. crosses through the Windsor-Detroit gateway. We are very proud to host and to be the gateway to Canada. Also, we're very understanding of the fact that these economic linkages extend far beyond the Windsor-Detroit corridor, reaching all the way from Montreal down to the I-75 backbone, with many, many jurisdictions, cities, and regions dependent on trade and the flow of trade.

Up to now, that trade has been carried on infrastructure built by our grandparents, so it's with a tremendous amount of support that our region and our community participated in a thorough and

comprehensive environmental assessment process, undertaken by all levels of government on both sides of the border, for well over four years.

The majority of this region supported the announcement made by the Prime Minister when they entered into the signatory agreement with the State of Michigan and the governor. We are in support of this piece of legislation. We are in support of it because it provides the certainty required to complete this project and to get it built in a timely fashion. It provides for the certainty that is needed in the P3 market to ensure that we have a competitive process. It provides for the establishment of the authority to allow for the work to be done on the American side.

In closing, the most important thing we can do is ensure that the economic viability, those economic lifelines, and that economic artery continue to function and to function well, with modern infrastructure, so as to support the hundreds of thousands of jobs and the industries that are dependent on this piece of legislation and this piece of infrastructure.

Thank you for your time.

● (1240)

[Translation]

The Vice-Chair (Hon. Denis Coderre): Thank you very much, Mayor Francis.

We have 20 minutes for questions.

We will start straight away with Ms. Leslie.

Ms. Leslie, you have the floor.

[English]

Ms. Megan Leslie: Thank you, Mr. Chair.

Thanks very much to all of you for your testimony. We're trying to learn as much as we can about these changes.

My first question is to Mr. Maas. What do you think the chances are of public interest organizations pursuing litigation to enforce the right to public navigation if these changes go ahead?

Mr. Tony Maas: Thanks for your question.

Let me clear that for an organization like ours litigation is always the last straw. It's not a desired strategy, in part because of the costs associated with it. Given the significant dependence that would be placed on the common law, under the changes proposed to the Navigable Waters Protection Act, this affects not only public interest groups per se, but also citizens and small businesses that rely on navigation. They may find themselves left only with that option of protecting their rights to navigation.

Ms. Megan Leslie: Thanks for that.

In looking at the proposed changes to this act, can you give an example of a project or a work that would have been covered by the existing act but will be exempt if this bill passes?

Mr. Tony Maas: The exemptions that most concern me have to do with the list of rivers, lakes, and oceans. It seems to me that everything outside that list is to some degree exempt, unless a citizen, a public interest group, or a business is willing to broach the situation via the common law.

Ms. Megan Leslie: So lake by lake, river by river, and case by case: that's the approach they'd have to take?

Mr. Tony Maas: So it seems to me, but I think a lot of these are questions that all of us are trying to get to the bottom of.

Ms. Megan Leslie: Thanks.

I'd like to share my time with Mr. Masse.

The Vice-Chair (Hon. Denis Coderre): Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you very much to the witnesses for being here.

Your Worship, Mayor Francis, thank you for your work on this file.

It'll be quick because I have shortened time, but I think there's a couple of things that are important to note.

First of all, you're the only witness from the public who is appearing for this. We've heard about the million-dollar man; you're the two-billion-dollar man now. I think it's important that we have this restriction noted, because it's a big issue for all of us.

Quickly, what types of community consultation have taken place in the past with regard to DRIC? That's important to the thoroughness in terms of what the city and the DRIC processes have been doing in the past.

Second of all, what other lawsuits has the city faced with regard to the Ambassador Bridge? We know that recently we won a decision against the Ambassador Bridge and the Sierra Club because the process was thorough. My concern is in deviating from that right now, but I'd like to hear what other lawsuits the Ambassador Bridge is suing the city on.

Mr. Eddie Francis: With regard to the first part of your question, the DRIC process undertook a very extensive environmental assessment process, which was conducted and sponsored by all levels of government—Ontario, Canada, the State of Michigan, as well as the U.S.. A couple of things, as you heard earlier... They looked at the new bridge position, location, a new plaza, and new roadway connections.

As you can appreciate, building a new bridge, a plaza, and roadway connections in a predominantly large urban centre obviously led to very extensive public awareness and public engagement. We led that process, as a city council. We were out there front and centre on behalf of our community. There were hundreds and hundreds of workshops and many, many opportunities for the public to offer opinions. Those were organized by us, as well as by others, so there was an extensive consultation here.

This issue has gripped this community for the last four to five years. There were a lot of opinions expressed, a lot of feedback given, and a lot of suggestions made, to the point where we also hired our own environmental and transportation experts to inform

the process, all of which culminated in the support of the final product. That final product, obviously, was announced once the environmental assessment was completed in 2009. There's a tremendous amount of support for the work and for the DRIC work, and a tremendous amount of support for the environmental assessment process that took place and the result.

With regard to the lawsuits from the Ambassador Bridge, I don't think there's enough time allocated for us today to talk about the number of lawsuits levelled against us by the Ambassador Bridge, but it is a routine occurrence. During the DRIC process, because we had our own team of experts and we were informing the process both on the Canadian side and on the U.S. side, they tried to sue us on the U.S. side unsuccessfully. Most recently, we were involved in a protracted case with them as it relates to zoning and bylaws and to properties they own. We were successful in that as well, but it's routine to be sued. It's also routine for us to be successful.

• (1245)

Mr. Brian Masse: Your Worship, with regard to what's happening in proposal 6, today there's a big decision over in Michigan. What's your opinion about what's going to take place with the Ambassador Bridge on the U.S. side? Do you think they'll have more lawsuits on the U.S. side as well, whether or not proposal 6 is successful? Maybe you could highlight the consequences if the yes side actually goes forward. For those who are not aware, proposal 6 is allowing people in Michigan to vote on a referendum.

Mr. Eddie Francis: I think there are probably more learned experts to speak to it, but proposal 6 is the Ambassador Bridge's attempt to take the decision away from elected officials by bombarding the local communities with false advertising as to what is being suggested will be completed here. At the end of the day, there are always going to be lawsuits. It's ensuring that the proper process has been followed...

I can say, from my involvement with the environmental assessment process on DRIC, that good care and extensive diligence...I think they've gone to the nth degree to ensure that community consultation was included, was listened to, and was responded to in order to ensure that they are presenting the best product from an environmental perspective as well as from a transportation perspective.

I think this bill, this piece of legislation, allows you to go one step further to allow for the type of certainty that the P3 market is looking for. It allows for the timelines and the successful completion of the project. I think it's a very significant step forward. Also, as you heard earlier, I also believe that the State of Michigan is looking with a very interested perspective at what may happen with this piece of legislation. That's why we're very supportive of it.

The Vice-Chair (Hon. Denis Coderre): Thank you, Your Worship.

I have just a small question. You feel that the bill in front of you right now will facilitate for the rest of the project itself, and that's why you're supporting it?

Mr. Eddie Francis: Absolutely, Mr. Chair. That's why I'm here.

This is a very important bill. It's more than just words on paper; this is the economic lifeline. I believe this piece of legislation will go a long way to really strengthening the position and really reflecting the hard work that has been done and culminated in the announcement by the Prime Minister and the governor in the summer of this year.

The Vice-Chair (Hon. Denis Coderre): Do you believe also that with that implementation for the auditing to make sure that...? Because sometimes with the P3s, with all those extras and all of that, you have all the tools to make sure that the taxpayers' money is well spent and you won't have what we're witnessing right now in my hometown of Montreal, for example.

Mr. Eddie Francis: Yes, I really do. I can speak of the experience that you heard about earlier today. The Province of Ontario is well into the construction of the billion-dollar-plus roadway. That went to a public-private partnership through the consortium, and obviously there are measures in place there. So far, the public accountability has been pretty transparent, and they've been very forthright in communicating where they are in the process, timelines, and budget. I'm sure the province, like the federal government, will ensure that the adequate checks and balances are in place.

• (1250)

The Vice-Chair (Hon. Denis Coderre): We'll check it out. Thank you.

Mr. Watson, it's your turn.

Mr. Jeff Watson: Thank you, Mr. Chair.

Thank you to our witnesses for appearing.

Mayor Francis, I will come to you very shortly on the DRIC, but first let me welcome Mr. Marit to the table.

Mr. Marit, you were last in front of this committee in April of 2008 as we were looking at the Navigable Waters Protection Act in length for several weeks back then. In anticipation of Build Canada, we were looking at how we might amend the navigable waters act for greater efficiency while those projects were being carried out. At the time, many of the witnesses recommended a complete rewrite, and I think that now that Build Canada is quite far down the road, we're now looking at that.

I want very quickly to put a question on the intent of the Navigable Waters Protection Act. I'm going to quote a witness we had, Ron Middleton, who at the time was the director of environmental management services for the Ministry of Transportation of the Government of Alberta. In his testimony, he said that he had checked this testimony with seven provinces and two territories prior to appearing before committee. Here's what he said:

For much of the 20th century the Navigable Waters Protection Act was only applied to major waterways and major projects across this country. Both the federal and provincial governments assumed that was the intent of the act, and that's how it was applied. As a result, very few approvals were issued for about 100 years.

He's talking about navigable waters permits. First of all, is that your understanding of what the Navigable Waters Protection Act is about? Secondly, in your estimation, do the amendments before us right now in Bill C-45 return it to that intention with great clarity?

Mr. David Marit: Thank you for the question.

To answer the second part first, on the amendments, I would hope that's where it gets us to, to our idea of what the act did have in it. An example I gave is that any time we had a municipality doing a bridge project in the Province of Saskatchewan, we had to have approval from the Navigable Waters Protection Act on any work we did on any bridge.

I can give numerous examples to this committee of bridges that are 50 or 60 years old and are not used for navigation in any shape or form. When we look at bridge replacements of over half a million dollars per bridge on these waterways that only flow for three to six weeks in the spring, to us it becomes very expensive and very outdated to have to do that. We can do the same thing with steel pipe and still respect the environment. I will assure this committee that many people in rural Canada and rural Saskatchewan who I will speak for will make sure they do that. We will do that.

Mr. Jeff Watson: Thank you, Mr. Marit.

Speaking of bridges, Mayor Francis, obviously the Detroit River international crossing is a substantial project in terms of immediate construction jobs and the long-term business investment that will come from having predictable redundant crossing at the Windsor-Detroit corridor.

We heard in testimony earlier from Ms. Borges at Transport Canada that the Ambassador Bridge Company has been part of eight lawsuits and two NAFTA challenges, and that the Bridge to Strengthen Trade Act is looking to address having any future nuisance lawsuits.

You have some legal understanding I think as well in terms of your background. The key to launching a legal challenge is the process approvals that can be subjected to judicial review in the Federal Court. Is that also your understanding?

Mr. Eddie Francis: That is my understanding.

Mr. Jeff Watson: Okay.

The Bridge to Strengthen Trade Act specifically removes these process approvals, the sources of judicial review, while still requiring a compliance plan under federal oversight for environmental and other concerns. Those are clauses 7 to 12 in division 5. Is that also your understanding?

Mr. Eddie Francis: Yes, in my review of clauses 7 to 12, and based on the information I have, that is correct.

Mr. Jeff Watson: This protection also extends not just to the DRIC bridge crossing, but to the current construction of the Windsor-Essex Parkway. Can you comment not just on the importance of the project, but on extending that same coverage to that construction?

•(1255)

Mr. Eddie Francis: The building by the province of the Windsor-Essex Parkway is currently under way, which is perhaps one of the major elements of the DRIC process and the DRIC environmental assessment. The parkway, to my understanding, also would be exempt from requiring certain permits and approvals under the number of applicable federal acts, which further reinforces the earlier testimony given.

Mr. Jeff Watson: Now, Michigan Governor Snyder, if I'm correct, is on the record as calling for similar legislation on the U.S. side. Is that your understanding?

Mr. Eddie Francis: My understanding is yes, and there is a slight difference between what is required on the U.S. side and what is required on our side. The U.S. side does not require as many permits as are requisite here. On the U.S. side, they simply need the U.S. Coast Guard permit and a presidential permit to proceed.

Mr. Jeff Watson: That's correct.

On removing these process points for judicial review, while saving the compliance, you may have heard federal officials earlier who said that the only real challenge when Bill C-45 is passed is a constitutional challenge against Bill C-45 itself. They were satisfied that the challenge could not be mounted.

Are you sufficiently assured, being in a strongly impacted community with this project, that at least on the Canadian side with the passage of Bill C-45, we will be clear of lawsuits?

Mr. Eddie Francis: Well, I'll let the Transport officials speak to the constitutionality, the potential challenge, and its success.

But what I do know, based on the years of experience and the years of involvement, certainly through the DRIC process, the environmental assessment process and where we are today, is that this piece of legislation, the Bridge to Strengthen Trade Act, is a significant step forward that gives the type of certainty that is required to ensure the construction and the timely completion of the bridge and, by virtue of that, the economic viability of the regions along that corridor.

Mr. Jeff Watson: And to P3 certainty as well in the bidding process...? Legal hazard is one of the things they look at in terms of

whether there is an uncertainty in terms of the process moving forward. Do you believe this will lead to more bidders with this uncertainty addressed, with more bidders equalling better value for the taxpayer in the end as well?

Your thoughts on that...?

Mr. Eddie Francis: I think this is perhaps one of the most important points you have raised, Mr. Watson, in the sense that this does provide certainty to the P3 market. This is unlike any other project because of the fact that for the last several years it has been engaged in a very public, very comprehensive environmental assessment process that's been challenged from time to time by an individual trying to protect his private interest, that being the Ambassador Bridge.

The P3 market is looking for certainty. They are looking for the certainty that we've done everything we can do to ensure that when they do come forward, when they do bid, and when they do put their proposals forward, they will be successful. I have no doubt in my mind, given that issue, that they will be successful in doing that.

The Vice-Chair (Hon. Denis Coderre): Thank you very much, Mr. Mayor, Mr. Maas, and Mr. Marit, for your contributions.

As you've noticed, we only have two minutes. Because we were supposed to provide some recommendations, what I will propose to you is this: that if we do put forward a motion and you table it before Friday at 5, we will be able to then bring it back on November 20 so we can pass those motions, because we have until November 20 at 5 o'clock.

[*Translation*]

If you have any motions, you have until Friday at 5 p.m. to propose them. At the next meeting, on November 20, our committee will be able to adopt these recommendations and send them to the Standing Committee on Finance.

Is that right, Mr. Clerk? I have been told yes.

Does that answer your questions? Yes? Good.

[*English*]

The meeting is adjourned.

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