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## **Standing Committee on Natural Resources**

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**EVIDENCE**

**Monday, December 9, 2013**

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**Chair**

**Mr. Leon Benoit**



## Standing Committee on Natural Resources

Monday, December 9, 2013

• (1535)

[English]

**The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)):** Good afternoon, everyone. We're here to continue our study on Bill C-5, an act to amend the Canada-Newfoundland Atlantic Accord Implementation Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and other acts and to provide for certain other measures.

We have witnesses with us today, but just before we get to them, there are a couple of things I want to mention. One is that we will put aside 15 or 20 minutes at the end of today's meeting to deal with future business. The other thing is quite disturbing, and it's starting to happen all too often.

I got a call, as did some of my colleagues, from a person in the media, someone from Canadian Press, who talked about information from an in camera meeting. The person had specifics on that information and said only that it came from an opposition member. I have no way of knowing whether that's true or not, but I just want to remind all members of the committee that when things are dealt with in camera, they have to stay in camera. It's really important that we can trust that what is said in camera and what is dealt with in camera stays in camera.

It is extremely disappointing to me that this has happened. It has happened at other committees too. It has to stop. It is a breach of members' privilege. I trust that it will stop. If somebody has unintentionally disclosed something that they hadn't intended to—and I know that can happen if you get into an interview and you kind of forget what you should and shouldn't be talking about—certainly I'd be interested in hearing from whoever has done that. We can have a bit of a chat about it. I just have to believe that this isn't going to happen in the future and that what is discussed in camera will stay in camera.

Mr. Julian, go ahead.

**Mr. Peter Julian (Burnaby—New Westminster, NDP):** Mr. Chair, your point about what's in camera staying in camera is very valid, and we, the NDP, as the official opposition always respect that. We do need to be reminded that the motion was in the public domain. It was read out in the public domain. That portion of the meeting was in public.

**The Chair:** That's true, Mr. Julian, but there was other information with specifics given to us, including the vote results and who voted which way that simply couldn't be a guess on the part of the media person. What you're saying is true to that point, but

what was divulged clearly had to have come from a member of this committee.

Again, I trust members to make sure that it simply doesn't happen again.

Mike.

**Mr. Mike Allen (Tobique—Mactaquac, CPC):** Mr. Chair, thank you very much for this. About five years ago, we had a draft report in natural resources that was leaked. I think that was very inadvertent, and I don't think anybody really intended for that to happen the way it did. This might have happened just the way that did. Hopefully, for another five or six years nothing else will happen.

I would just appreciate caution on the part of all members of committee to make sure that when we are out talking, we do consider that some of these meetings are in camera and that the details of those in camera meetings are not shared.

I agree with Mr. Julian. People knew the motion was on the table, because it was read in public, but the details certainly weren't. I'd just appreciate everybody keeping that in mind.

**The Chair:** That was exactly my point, Mr. Allen. Thank you. We have to trust that things that are discussed in camera stay in camera.

Let's get to the business we're here to discuss today.

As witnesses today we have, first of all, from Unifor, Lana Payne, Atlantic director. Welcome.

We have by video conference from Halifax, Nova Scotia, from the Maritimes Energy Association, Barbara Pike, chief executive officer. Welcome to you.

As an individual, we have Susan Dodd, assistant professor of humanities and an author from University of King's College, Nova Scotia. Welcome to you.

Thank you all for being available today. There was a fourth witness who was supposed to be with us by video conference today who is ill and couldn't be here. I certainly wish them a speedy recovery.

We will go with presentations of up to seven minutes in the order that witnesses are listed on the agenda, starting with Lana Payne, Atlantic director of Unifor.

Go ahead, please, with your presentation.

**Ms. Lana Payne (Atlantic Director, Unifor):** Thanks, everybody, for having us here. We really appreciate the opportunity to present on Bill C-5.

I would like to give apologies, because our presentation is only now at our translation department. We will send it electronically so that folks can have it, although I did bring the English version for your translation department.

Today, as already mentioned, I am here representing Unifor, Canada's largest energy union. My remarks, I would add, are supported by both the Newfoundland and Labrador and Nova Scotia federations of labour, which were both active in their provinces with respect to consultations over the last decade dealing with an offshore oil and gas safety regime.

Over 20,000 of Unifor's more than 300,000 members work in the energy sector across Canada, including over 700 workers in Newfoundland and Labrador's offshore oil industry on both the *Hibernia* and *Terra Nova* platforms.

It is an industry, as you in this room will know, that has known its share of tragedy over the years: the sinking of the *Ocean Ranger* drill rig in February 1982, and the perishing of 84 workers; and in March 2009, the crash of Cougar flight 491, with the loss of 17 workers.

The joint federal-provincial commission of inquiry report into the *Ocean Ranger* disaster noted that "the shock wave created by the loss was felt particularly throughout" our province. It also noted, "In that tightly-knit maritime community there were few who did not discover a link, direct or indirect, to one of those lost in the tragedy."

Similar words and sentiments were repeated following the crash of flight 491. Perhaps this is why workplace safety in the Newfoundland and Labrador offshore is such a matter of public concern as well as worker concern.

Unifor is very pleased that we finally have, with the federal enactment of this bill, real safety laws for our offshore that can be enforced rather than the guidelines that were in place for the last two decades. A safety regime tailored to the unique challenges posed by working in the offshore is a positive step, but there is still substantial room, in our opinion, for improvement with respect to building a responsive, proactive, and preventative occupational health and safety culture in the Newfoundland and Labrador offshore oil industry.

First and foremost, it's quite unfortunate that the legislation does not address what we believe is still critically needed in our offshore, an independent, powerful, stand-alone authority in charge of safety and the environment, as was recommended by Commissioner Robert Wells, who I believe you may have heard from last week as a witness.

In this regard, Canada is still far behind industrialized oil economies such as Norway, the U.K., and Australia. Even the United States has made a move to separate safety and environmental enforcement from the management of the offshore oil and gas industry with the creation of the Bureau of Safety and Environmental Enforcement.

The U.K. moved in this direction after the *Piper Alpha* disaster and subsequent public inquiry by Judge Cullen. An explosion and fire on the U.K. platform in 1988 killed 167 men. It is still considered the world's worst offshore oil disaster. It raised the issue

of competing or conflicting regulatory mandates and what we today call regulatory capture.

The inquiry recommended that the responsibility for enforcing safety should be removed from the department of energy and placed with the health and safety executive, because having both production and safety overseen by the same agency was viewed as a conflict of interest. This has now become the standard in most oil-producing countries or industrialized ones.

In 2005, Australia, also heeding the advice of Justice Cullen, created the National Offshore Petroleum Safety Authority, an independent offshore safety agency. In 2012 they added environment to its responsibilities.

In June of this year, the head of the Australian safety and environmental agency, Jane Cutler, noted that the *Piper Alpha* disaster and inquiry and recommendations by Lord Cullen have had a huge impact on safety regulation and enforcement in her country.

She noted, "An entrenched industry and regulatory culture is very difficult to change even when faced by clear evidence of the need to improve the human and organizational aspects of their safety programs. There is resistance to change even when there is a clear opportunity to refocus regulatory programs to emphasize the role of human, organizational and management influences on offshore safety."

• (1540)

She said that as we move forward we must ensure that "safety and environmental management are treated with the same degree of seriousness as profit and loss".

Norway is perhaps the world leader with respect to offshore safety and the environment and in its involvement of all stakeholders in developing and implementing a world-class safety culture for the offshore oil industry. In 2004 it created the Petroleum Safety Authority. In both phase one and phase two of his inquiry report, Commissioner Wells was very clear about the need for such an independent safety authority. He said, "Vigorous oversight and prompt action can avert accidents and prevent injury and loss of life."

Commissioner Wells was also very clear about the importance of communications and engagement with workers and the public with respect to safety in the offshore oil industry. It's been three years since the release of his report and still the full spirit and intent of his recommendations have not been implemented.

I can share some examples with you about this, but I don't think my seven minutes are going to allow for time, so if someone wants to use their question in that regard, I can certainly fill in.

There are two examples I would raise with respect to that point.

First is the July 2011 near crash, the severity of which was not reported to workers or to the people of Newfoundland and Labrador by the regulator or the operators. At that time the helicopter carrying crew offshore came within 38 feet of crashing in the ocean. It had dropped 152 metres in 32 seconds. Workers and the public only found out about the severity of this incident just this fall, two years after it occurred, and only because of the investigation by the Transportation Safety Board. It is also thought that this incident may have had a different result had the near crash occurred at night. You're probably aware that we still do not have night flying in the Newfoundland and Labrador offshore. This is also an issue that I could speak to in any questions you might have.

Recommendation 12 of the Wells inquiry dealt with the issue of night flying, something that has been banned since February 2012 in the offshore of Newfoundland and Labrador and Canada. He did not recommend a return to night flights, but rather recommended that criteria be worked out for cases when night flying might be imperative or during an emergency. This was not exactly the direction that was given to the offshore helicopter implementation committee at the time when Commissioner Wells filed his report. Instead, quite a large caveat was allowed around recommendation 12.

Unifor believes that an independent safety and environmental authority would respond to such cases in a different and more proactive role and fashion. In our opinion, an independent, proactive, and vigilant safety and environmental authority would begin to restore the faith of workers in the role of a regulator in protecting and acting to improve safety in the offshore oil industry. It would avoid the very real danger of regulatory capture.

There are two other points I would like to raise.

The first deals with the issue of right to refuse, which is in proposed section 205.05 in clause 45 of Bill C-5. The language in Bill C-5 is very important and quite strong. We advocated improving this given the dangers in the offshore, but we do raise a matter of concern. That is, in Bill C-4, which I know your committee does not deal with, there have been changes made to the federal labour code with respect to the right to refuse. We are quite concerned that this could impact on this legislation. We would encourage you to keep the language that is currently in this bill, because it is a lot stronger than what we've seen in Bill C-4. Hopefully, you will not make amendments to that part of the bill.

• (1545)

My final point deals with proposed section 205.118, which is the establishment of an advisory council for the offshore oil and gas industry. It refers to a stakeholder advisory council.

We would strongly urge that both the federal and provincial governments ensure that the union representing workers offshore be invited to recommend their own representatives to this committee. This will ensure accountability.

We would also suggest that these worker representatives report back to the workplace safety committees on the council's initiatives and activities. These and other matters do not necessarily require a legislative amendment, but could be achieved in the mandate of the advisory council.

It has been our experience that such a body could provide a proactive approach to safety oversight in the offshore, similar to the tripartite structures in other oil jurisdictions, such as Norway. The Norwegian Petroleum Safety Authority notes that collaboration between employers, unions, governments, and workers are important cornerstones in efforts to establish and develop health and safety in their industry: "From an ethical perspective, it is crucial that people exposed to risk participate in decision-making processes which affect such exposure."

How workers are currently engaged in the offshore needs to change. While we have seen some small steps in this regard, with the new management at our regulator, it is essential that structures with clearly defined roles and responsibilities be put in place to ensure an ongoing, proactive safety dialogue.

In conclusion, we are pleased that we finally have this safety regime for workers of the offshore oil industry, but we do believe that a stand-alone, powerful, and independent safety and environmental authority is not only necessary but also essential in advancing safety in the Newfoundland and Labrador offshore oil and gas industry.

Thank you.

• (1550)

**The Chair:** Thank you, Ms. Payne.

Now, by video conference from Halifax, Nova Scotia, from the Maritimes Energy Association, we have Barbara Pike, chief executive officer.

Go ahead, please, Ms. Pike. You have up to seven minutes.

**Ms. Barbara Pike (Chief Executive Officer, The Maritimes Energy Association):** Good afternoon, Mr. Chair and honourable members of the committee. It is a pleasure and an honour to be presenting to your committee today on this important piece of legislation.

The Maritimes Energy Association is an independent not-for-profit industry organization. We represent businesses that provide goods and services to the energy sector onshore and offshore, renewable and non-renewable, in eastern Canada, and predominantly in the three maritime provinces.

While operators and producers are members of the association, our core membership is the hundreds of local companies that employ thousands of people and inject hundreds and millions of dollars into our local economies. We appreciate the opportunity to provide on their behalf the association's perspective on Bill C-5, which has become known as the offshore health and safety act.

Maritimes Energy supports the offshore oil and gas industry and encourages its continued development under a robust regulatory regime. We applaud the Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland and Labrador Offshore Petroleum Board for the work both do and the strict standards to which the boards hold the offshore industry.

It should be noted that safety does come first for the oil and gas industry. This is not about having a safety plan ready or collecting dust on a shelf in your office. It is about a culture of safety. It is a mantra in the industry. Every meeting starts with a safety moment. Every incident is reported. Every trend is tracked. It's not lip service; it is a mantra: safety does come first.

The Maritimes Energy Association supports Bill C-5. It formalizes offshore occupational health and safety legislation, providing clarity around what government agencies are responsible for what.

The legislation establishes a hierarchy of responsibility that makes operators ultimately responsible for all activities related to their operations with regard to occupational health and safety. It requires that operators share this OSH information with their contractors, who are our members. It grants the CNSOPB and the C-NLOPB the authority to disclose to the public information related to occupational health and safety. This adds to the principles of openness, transparency, and accountability for our offshore regulatory regime.

The bill formalizes the right of a worker to refuse work they believe constitutes a danger to themselves or others, and protects them from retaliation. As well, it covers the requirement for occupational health and safety committees.

These amendments clarify jurisdictional uncertainties. The boards will have clear authority under the accord acts to enforce all occupational health and safety requirements.

Maritimes Energy is also supportive of the formation of the advisory council, which will include representatives from industry, government, and employees to provide advice on matters related to occupational health and safety for our members.

These amendments are long overdue, but let me be clear: over the years that these amendments were being negotiated, the safety of offshore workers remained the top priority of both offshore boards. The safety of offshore workers is and always will be a top priority.

Safe operations for workers and for the environment outweigh all other considerations. Both boards have done that, even with legislation that dates back to the 1980s, legislation that obviously does not reflect today's reality. Through guidelines, through conditions on authorizations, and through sheer will, the boards have regulated Canada's east coast offshore industry. Ours is a regulatory regime that does reflect best practices, latest technologies, and most important, lessons learned.

That has not always been easy with the existing accord acts, which require that any amendments be approved by provincial and federal governments. These amendments are such an example.

While we celebrate their introduction and support their passage, we also note that they've been 13 years in the making. It has not been an easy process with the two boards and so many provincial and government departments at the table. It was a lengthy process.

Through those years, the two boards stayed focused. Through such techniques as conditions on authorizations, staff ensured that the latest advances in occupational health and safety were applied. Passage of the bill will strengthen the way the two boards already administer and enforce offshore safety activities for our members.

In closing, I want to reiterate the Maritimes Energy Association's support for Bill C-5. The amendments provide greater clarity for who is responsible for regulating offshore occupational health and safety. It strengthens our regulatory regime.

Safety is the priority of the oil and gas industry. That industry includes the operators, the supply chain, and the regulators. The responsibility for safety rests with those in the workplace: the operator, the contractor, the supervisor, and the worker, everyone in the workplace.

The regulator's responsibility is to see that those who have that responsibility are exercising that responsibility. It is not the job of the regulator to take on the job and guarantee safety.

• (1555)

Like the onshore, Bill C-5 provides clarity for our members working in the offshore. It enforces the requirement that the information needed by our members to exercise their responsibility is provided.

It gives to the boards the regulatory responsibility to ensure that we all—workers, contractors, and operators—make offshore occupational health and safety the top priority.

Thank you for your time, and for your invitation to present to you today.

**The Chair:** Thank you, Ms. Pike, from the Maritimes Energy Association.

Finally, we have here as an individual today, Susan Dodd, assistant professor of humanities, from the University of King's College, Nova Scotia.

Go ahead, please, with your presentation, for up to seven minutes.

**Dr. Susan Dodd (Assistant Professor of Humanities and Author, University of King's College, Nova Scotia, As an Individual):** Thank you.

I am actually a professor in the foundation year program at the University of King's College, in Halifax. My field of study is social and political philosophy.

I am the author of a book on the aftermath of the *Ocean Ranger* disaster. At the moment, I'm collaborating with Dr. Mélanie Frappier, from the history of science and technology program at King's, on a textbook for Oxford University Press. That book is called *Engineering in Canada: Results, Risks, and Responsibilities*. We're using Canadian case studies to provide engineering students with an introduction to their professional code of ethics.

My work on occupational health and safety developed by accident, quite literally. My oldest brother, Jim, was one of the 84 men who died on the *Ocean Ranger*. It still gets to me, it's amazing.

Anyway, as you know, in the wake of that disaster, the Government of Canada and the Province of Newfoundland conducted a long inquiry, first, into the causes of the loss, and second, into the appropriate regulatory organization for the Canada-Newfoundland offshore.

In those days, one of the biggest problems was turf wars between Ottawa and St. John's. Chief Justice Hickman's decision to house the permit-granting function with the occupational health and safety regulatory function was deliberate. When I interviewed him for the book on the *Ocean Ranger*, he was really clear that he thought those groups should be under the same organization in order to prevent what he saw as one of the main political causes of the *Ocean Ranger* disaster, and that was fragmentation among bureaucracies, among the power holders.

More importantly, and I often need to reiterate this point, the cause of the *Ocean Ranger* disaster was not the weather. It was a lack of political will to regulate in 1982.

Both Newfoundland and Canada wrongly assumed that the oil companies would self-regulate, that they would comply with the rules that covered them when they operated in American jurisdictions, and those companies did not.

The lesson of the *Ocean Ranger* disaster is that the kind of regulatory regime in place is less important than the government's expression of political will. If there is no will to enforce regulations, then we risk setting up our people and our environment for deadly exploitation. This is definitely what we learned at Westray, as well, because if the existing legislation had been enforced at Westray, that explosion and those deaths would not have happened.

Within companies, the first priority, the *raison d'être* of the organization, is to maximize pay for shareholders. This is not hostility or antipathy; it's a matter of priorities. Government's job is to ensure that the collective goods of the electorate are enhanced by, not just protected from, corporate activity. The regulatory needs of the offshore in Canada changed with time, obviously.

In 1982, one of the most pressing problems was a combination of thoughtlessness about occupational health and safety, a combative relationship between federal and provincial authorities, and a deadly naïveté about the professionalism of rig operators.

The New Orleans-based operator of the *Ocean Ranger*, Ocean Drilling and Exploration Company, was one of the most experienced rig operators in the world in 1982. Even the most cursory glance at Chief Justice Hickman's report will show you that ODECO was negligent by any common-sense use of that term.

ODECO's deadly mismanagement of the *Ocean Ranger* was possible only because the Province of Newfoundland and the Government of Canada were preoccupied with fighting over anticipated revenues, and they were naively confident that the so-called experts in the industry would perform professionally.

This dynamic will certainly repeat itself if government is once again complacent about its regulatory responsibility. It is worth remembering that although ODECO no longer exists, it and its fleet were purchased by Diamond Offshore Drilling, which still uses the name "Ocean" in the names of their vessels.

The well owner was Mobil Oil, so I'm glad to see how clearly Bill C-5 points to the responsibility of the owners to ensure that the rig operator behaves professionally in relation to safety.

Today, one of the central problems that this bill seems to address is clarity around functions and the need to keep regulations up to date in the changing industry.

● (1600)

I have given a lot of thought to what I could add to your discussion that...[*Technical difficulty—Editor*]

First, the regulatory structure will be exactly as effective as the political will that supports it. Where there is no political will, that is, where it is assumed that corporations are best left to their own expert judgment, there can be no effective regulation. That is where disaster begins.

The fact that this bill does not implement recommendation 29 from the Wells commission seems to me to be potentially a red herring. If the political will to regulate is communicated, safety will be respected. A stand-alone safety division would be effective only if it had resources and a commitment from government to prosecute when appropriate. Simply creating the office will not do the trick. It would require an investment.

Second, failure to regulate leads not only to loss of life and destruction of the environment, but also to the public's losing confidence in the legitimacy of government. This happened to an extent after the *Ocean Ranger* loss, certainly after the Westray disaster, in the States after the *Deepwater Horizon* disaster and the oil spill, and we're seeing the same kind of dynamic after the Lac-Mégantic disaster. These events are also political disasters.

Third, I would like to see a fines system that earmarks revenues for research and development. When I interviewed John Crosbie for the book, he said, "We still don't know how to get those men off those rigs." That was a sort of typically gendered statement, but anyway....

Industry does not have an internal motivation to study evacuation systems. Government needs to take that on, and in this case I would say in partnership with Memorial and Dalhousie engineering schools. We can't leave research and development simply to industry. They have different priorities than the good of the public. We need independent researchers working on evacuation and rescue technologies.

Fourth, the advisory council might, in cooperation with governments, business, and universities, convene a conference on regulation every three years. Having a regularized conference would help Canada keep up with changing industry and international standards. We could invite regulation experts from Europe as well as from the U.S.A. We might use Hickman's conference that he conducted after the *Ocean Ranger* as a model for that.

I would love to see governments consider local, by which I mean provincial, hiring and training requirements. The training would have to go with it, right? Otherwise things like the *Ocean Ranger* disaster happen.

My sixth and final point is a question. It goes back, I think, to the spirit of the recommendation on the Wells commission around the independence of safety regulators. The question is this: Does Bill C-5's clarification of the roles of the various officers entail an increase in the number of government officers responsible for regulating work on the rigs? It seems to me that investment in regulatory personnel would be a real expression of political will to regulate safety in the offshore.

Thank you.

• (1605)

**The Chair:** Thank you, Ms. Dodd, from the University of King's College in Nova Scotia.

We will go directly to questions and comments. The seven-minute rounds will start with Mr. Trost, followed by Mr. Harris, and then Mr. Regan.

Mr. Trost, go ahead, please, for up to seven minutes.

**Mr. Brad Trost (Saskatoon—Humboldt, CPC):** Thank you, Mr. Chair.

Thank you to all of our witnesses for being here today.

I'm going to start with a fairly general question before we start to get into more of the specifics that we've asked some of the other witnesses.

Fundamentally, what will change once this legislation is enacted? We've heard from other witnesses who have said that there already is good practice done, and this will add a little bit of clarity. It will add legal teeth. Others have said that not a whole lot will be changed.

Fairly briefly, because I do have other questions, would each of the three of you care to comment on what will change on day one once this legislation is proclaimed into law, from your perspective?

**The Chair:** Go ahead, Ms. Payne.

**Ms. Lana Payne:** There are a couple of very new features in this legislation. One is the ability to put in place an independent safety officer, if need be, which is not there currently.

The implementation of the advisory council in a tripartite fashion I think is also a good step forward, as is the fact that workers have rights with real teeth now. I don't know if you're familiar with it or not, but before, they were only referred to as guidelines. While there was some practice adhering to them, I have to tell you that there was a lot of ambiguity about whose responsibility it was to implement and be in charge of enforcing them. This legislation also clears that up a little bit as well.

**The Chair:** Thank you, Ms. Payne.

Ms. Dodd, go ahead, please.

**Dr. Susan Dodd:** I don't think I have anything further to add to that.

**The Chair:** Ms. Pike.

**Ms. Barbara Pike:** Fundamentally, there won't be a lot of change. A lot of this has been implemented by the boards over the past number of years, but as was mentioned by Ms. Payne, the fact is that it now has some legal teeth, and particularly for workers, because they now have the right to refuse work and are protected from retaliation. I think that adds a measure of security for them in working in the offshore.

**Mr. Brad Trost:** My next question is predominantly to Ms. Dodd, but again, if other people want to comment, feel free to do so.

I understand very much your point when you were talking about how political will is necessary, and how that's probably more important than organizational structure. One of the things other witnesses have said is that this legislation provides for public accountability, for more public access to information. Do you believe that's an important part of implementing the political will that you were talking about? If so, why? If not, why not?

**Dr. Susan Dodd:** Absolutely, and for these workplaces, it's very much like coal mines, in the sense that they're invisible to the people who aren't out there, and one of the things that happens is that if regulation is lax, you wind up with a kind of ghost regulatory regime. People who aren't out there think things are safe, and the conditions can disintegrate to a point where workers are bullied and the situation is horrific. Access to information I think is absolutely crucial to safety.

**Mr. Brad Trost:** Does anyone else have a very brief comment?

**Ms. Barbara Pike:** I agree, particularly on the way the legislation is written. The boards, while they have perhaps wanted to be able to release information in the past, have been restricted in releasing it, because of the protection of information provided to them by a third party and what can actually be released through access to information legislation.

• (1610)

**Mr. Brad Trost:** Thank you.

**Ms. Lana Payne:** I hope that public accountability is improved through this legislation, because it's certainly needed.

**Mr. Brad Trost:** Thank you for your answers.

Ms. Pike, when you were talking about going through your list of things that are going to change, you mentioned that jurisdictional uncertainty will decrease. We've heard that before, but none of us here have really worked on the rigs—at least, I don't think any of us around here have—and we're not regulators.

I've flown in a lot of helicopters, and I was a mining geophysicist, but I never did anything offshore in my geophysics career. Can you give a concrete example of how jurisdictional uncertainty will decrease through this? Maybe I should have given you more warning on this, but can you give us something that we can understand and grasp as lay people, effectively, in understanding this?



**Ms. Barbara Pike:** On transportation of workers back and forth to the rigs, for instance, the Transportation Safety Board or Transport Canada covered helicopters and covered transportation, yet the board also was responsible. That leaves a kind of.... This provides more clarity. There was a jurisdictional difference: Transport Canada versus the CNSOPB and the C-NLOPB.

Another one would be through environment, that sometimes.... Is it the NEB? Is it the C-NLOPB? Is it CNSOPB? Is it the Canadian Environmental Assessment Agency? This provides better clarity of the jurisdictional muddiness or grey areas.

**Mr. Brad Trost:** Ms. Pike, my notes aren't totally clear on this, but I think you were talking about owners, rigs, functions, and getting things to be more up to date. We've heard other people talk about the importance of getting the hierarchy clear and figuring out how that is very important, particularly with subcontractors, etc.

Could you provide a little more comment on why it's important that the owners of the rigs are able to have clear lines of communication to their contractors and the people going down?

Did I did get the right person who was talking about that? Am I correct?

**Ms. Barbara Pike:** I did talk about the importance of this for the operators, the contractors, the workers, and the regulators. I'm not sure if I used exactly those words, but it has to do with how, in the end, safety offshore is the responsibility of all of us. These regulations, this change in the amendments in the bill to the accord acts, provide that the ultimate responsibility is with the operators. They can go to their contractors or subcontractors and workers. Also, then, going back up the line, those workers have the ability to refuse work if they don't see something happening. It goes both ways.

You can have as many rules as you want out there, such as making sure that you wear the safety equipment, or not using pipes to climb on, but if workers continue to do that, then you're going to have incidents. This way, I think this particular legislation provides much more clarity that people can deal with.

**The Chair:** Thank you, Mr. Trost.

We go now to Mr. Harris for up to seven minutes.

**Mr. Jack Harris (St. John's East, NDP):** Thank you very much, Chair.

Thank you, all three of you, for your very helpful presentations today.

Ms. Payne, first of all—and perhaps others would comment as well—I know that you, in addition to currently being the Atlantic director for Unifor, spent five years as president of the Newfoundland and Labrador Federation of Labour. You and others have talked about the fact that only guidelines had been in place for a couple of decades, and how it was taking 12 or 13 years to actually come out with and bring into force this legislation that everybody seems to think is a good idea.

Why would it take 20 years for us to get to this point when everyone says safety is first and the number one priority of these companies and of government and everybody else? Why are we here dealing with this 20 years later, instead of 20 years ago?

**Ms. Lana Payne:** Well, I can only surmise based on my own experience, which is that the consultation process was taking so long that things would change and we would have to consult all over again, so there would be no implementation on the past consultation.

I would argue that there was a real sense of just a kind of fudge and delay, fudge and delay. There didn't really seem to be a priority to get the legislation put into place, in my opinion, until the crash of the Cougar helicopter in March 2009. Then, very quickly, in 2010, while Commissioner Wells was holding his inquiry, the consultation process started up again, after what had been a considerable delay. In the midst of all of that, we are now here, so I would argue that perhaps the impetus to get us here was the fact that 17 workers lost their lives.

• (1615)

**Mr. Jack Harris:** We also have the discussion about an independent safety regulator. You mentioned the incident in 2011 when the near crash took place, and the public and the workers not being informed of this.

I have a concern, too, about an independent safety regulator. Do you think an independent safety regulator would have made a difference in that?

Perhaps all three of you could give your opinion as to whether you think.... We have Transport Canada refusing to follow a recommendation of the Transportation Safety Board that helicopter transport be by helicopters that have a 30-minute run-dry capability.

We have helicopters going a couple of hundred kilometres or more offshore, and we have the Transportation Safety Board saying that we must have this 30-minute run-dry capability. Transport Canada says no. We now have contemplation of night flights for transportation, when evidence before the helicopter inquiry was clear that they're more dangerous.

Do you think an independent safety regulator would make a difference given those sets of circumstances and given those concerns being raised?

I'd like Barbara Pike and Susan Dodd to respond as well.

**Ms. Lana Payne:** I believe so, but I also agree with the professor in that she talked about the safety authority needing to be properly financed and with proper regulatory training for the people who work there. All of that needs to be automatic. When I refer to a stand-alone safety agency, to me this has to come with it. I think it would be different, because your job is about just the safety aspect and you would be more proactive, as we have seen with the other safety authorities in other jurisdictions.

Norway in particular has very strong all-stakeholder involvement. In fact, on helicopter safety they conduct a tripartite review of helicopter safety every three to five years. They have done three now in the last decade. They look at all aspects of helicopter transportation in their offshore and how they might collectively make improvements in that regard.

They just did so with a number of recommendations, one of which was to mitigate night flights even though they have a much better operating environment than we do in the Newfoundland and Labrador offshore. That is to say that in the Norwegian waters, they have multiple platforms on which helicopters can land in case there is a problem. From one platform to another, you do not have 300 kilometres of open ocean. There are places for these helicopters to be able to stop down. I think that makes a big difference and speaks to the 30-minute run-dry capability.

In fact, not just the TSB recommended that helicopters in Newfoundland's offshore have the minimum 30-minute run-dry capability; so did Commissioner Wells. These helicopters do exist in the world, if this were to be taken seriously.

Once again, with a stand-alone safety authority, I think your first response would be to say, "Okay, we are regulating the offshore in this regard; let's make this a condition of operation in the offshore operating environment."

I am very concerned that this key recommendation around the 30-minute run-dry has still not been implemented. I can tell you that the families of the victims of Cougar flight 491 have been very strong about saying that we need to do something to improve helicopter safety in the offshore.

This latest incident in July 2011 I can tell you was very chilling for the people who work in the offshore and for the families—and to find out two years later that we nearly had another crash that could have had another loss of life at the same time as we have a helicopter safety implementation committee operating offshore that has not once considered a way to deal with helicopter safety as being an increase in fleet capacity. None of these matters have been looked at.

So yes, I think a stand-alone safety agency is critical.

• (1620)

**The Chair:** Thank you, Ms. Payne.

Briefly, Ms. Pike.

**Ms. Barbara Pike:** To answer Mr. Harris' question about why this has taken 13 years, I think there was a lot of effort made to get this through faster. The fact is, though, you had so many government departments that were working on it; you had to try to get agreement among not only Nova Scotia labour, Newfoundland and Labrador labour, and the federal labour department, but also other departments that were involved.

On top of that, through that period, you had two governments that were going through minority governments. To get the legislation through, to get passage, it creates issues. I think that was one of the delays.

This legislation does to some degree address the issue of having a separate safety regulator. I probably mirror Justice Wells' comments last week to this committee that when it has to do with helicopter safety, the ability to set up the independent safety officer will be a good addition.

We also remember that when you talk about the Transportation Safety Board and Transport Canada, both the C-NLOPB and the CNSOPB are part of the international regulator forum. They do learn

about best practices. They do talk to their colleagues in Norway, Australia, and the U.K. on a regular basis. I think some of the changes that have been made in this legislation will enable them to implement some of those changes faster.

**The Chair:** Thank you, Ms. Pike.

Ms. Dodd, go ahead very briefly, please.

**Dr. Susan Dodd:** I would like to call into question the presupposition that regulations have to be disaster driven.

One of the things that really struck me when I interviewed Alex Hickman about the cause of the *Ocean Ranger* disaster was that the *Ranger* had a sister rig called the *Dyvi Delta* and it was operating, I think, in Norway. They had realized that the ballast control room should not be in the leg of the rig. They had moved the ballast control room onto the deck.

Whenever people tell the story about the *Ranger* they start with the big storm and then they go into the portal, and they tell this kind of mechanical causal chain that starts with a design flaw on the rig. Somebody out there figured out that design flaw, so that the Norwegian operation responded to it without having to react to a disaster. Justice Hickman said that was one of the big questions he had hanging over him after the inquiry. He kept wanting to find out who knew, and who made that decision, but he couldn't find the answer to that.

One would hope that the advisory council this legislation brings about would be not only looking at best practices but taking a lead in terms of bringing people from jurisdictions around the world together to talk about how we can actually develop legislation and develop an industry commitment to invest in research and development around safety.

**The Chair:** Thank you.

Mr. Regan, you have up to seven minutes.

**Hon. Geoff Regan (Halifax West, Lib.):** Thank you very much, Mr. Chairman.

Thank you to the witnesses for joining us today.

As you probably all know, this bill enshrines workers' right to refuse work, or in this case we're talking really about transport, if they have reasonable cause to believe that there is danger involved. The definition of "danger" is not actually in the bill, although power is given in the bill to the Governor in Council to make regulations that would provide the definition.

In your view, how should the term "danger" be defined?

Ms. Payne, you talk about the right to refuse. How is it stronger in Bill C-5, or how is it stronger than it is in Bill C-4, and what are the implications of that?

I will start with you and then I will turn to the other witnesses in the order that we've had them so far.

• (1625)

**The Chair:** Go ahead, Ms. Payne.

**Ms. Lana Payne:** The language in Bill C-5 is quite strong, because all you need is to have a reasonable cause that subjects you to danger; whereas what we are seeing now in Bill C-4 places the condition when defining danger as posing an imminent or serious threat. There is a qualifier around that. I think these words almost provide an unending opportunity for debating the quantum risk of the work that is occurring, which will almost supplant the real issue of whether or not the danger exists to the worker.

Bill C-4 also has in place a very long list of almost paper procedures that you have to go through in order to prove that you're in danger, whereas this one, which I hope would reflect more what is in the Newfoundland and Labrador safety code and the Nova Scotia safety code, gives more of a sense of what's reasonable instead of putting qualifiers around it.

**Hon. Geoff Regan:** Just a second.

**The Chair:** Go ahead, Mr. Regan.

**Hon. Geoff Regan:** Thank you, Mr. Chair.

What I was asking was whether you have a view on how it should be defined.

**Ms. Lana Payne:** I haven't written out what the language should look like, but definitely I think what we see in the Newfoundland... and in the Nova Scotia...that kind of wording would be better than what we're seeing in Bill C-4, for sure.

**Hon. Geoff Regan:** Thank you.

**The Chair:** Thank you.

Ms. Dodd, go ahead.

**Dr. Susan Dodd:** No, I'm fine.

I would agree that erring on the side of reasonable cause rather than imminent danger would be the way to go.

**Ms. Barbara Pike:** I agree.

I think one of the problems is that if you too narrowly define something, then you run into problems. I think that how it's written for onshore, both for Nova Scotia and for Newfoundland, should be how it is reflected in this particular legislation.

**Hon. Geoff Regan:** Professor Dodd, you referred to Chief Justice Hickman. If I understood you correctly, I think you said his view was that it would be better to house the functions together, the overall regulatory with the regulatory for safety. You also said that if you had an independent authority, it would obviously need to be properly financed and properly trained.

Do you share Chief Justice Hickman's view, or do you share the view presented by Justice Wells in his report that there should be an independent stand-alone authority?

**Dr. Susan Dodd:** I would want to look at this more carefully. I think Chief Justice Hickman was responding to a circumstance that pertained to the early 1980s as the regulatory regime was taking shape. The problem he had was that the various powers were pulling apart.

I think Wells is referring to a completely different scenario, and given the Cullen report and even things that the Americans have had to do in the wake of the *Deepwater Horizon* gulf oil spill, I think a

strong case can be made for an independent stand-alone safety organization.

If you talk to the people who work in health and safety for the offshore both in Nova Scotia and in Newfoundland, I bet you they would say that even given the flawed regulatory regime they've been working with up to now, they could have done more if they had had more resources. You people know better than anyone else: you can have good laws, but if you don't have the resources to implement them....

**Hon. Geoff Regan:** Speaking of the resources, but more to the point, what I wanted to get to was your point about political will. You've obviously been looking at this for quite a while. What's your sense of how you maintain that political will in the absence of disasters? Obviously, we want to refer to the Norwegian model, so to speak, of not requiring disasters to prompt us to do things.

You've talked about the idea of conferences on local hiring and training every three years. Are there other ways that come to your mind on how you maintain that political will?

• (1630)

**Dr. Susan Dodd:** I think it's ludicrous for our governments to think we can police these organizations. The technology moves too quickly, and we don't have the financial power to police them. If it turns into a conflict relationship whereby we're deluding ourselves into thinking we can effectively police them, I think it would be embarrassing for everyone.

I think the relationships have to be continuously forged. I don't have any further specifics, but again, the advisory council sounds like a good place to start, continuing to engage these organizations as fully as possible in the interests of the electorate.

**Hon. Geoff Regan:** Does anybody else want to answer that question about how you maintain the political will?

**The Chair:** Go ahead, Ms. Payne

**Ms. Lana Payne:** I think structures matter, particularly when we're talking about safety, and I think tripartite structures matter. We can't assume as workers that we know everything about safety, and we certainly can't assume as employers that we know everything about safety. That's why we have workplace safety committees. Everybody comes together. They bring in what's happening in the workplace, talk about it, and they find a way to try to make it better.

You actually need that at different levels, not just at the workplace level, but at the regulatory level as well. You have a place to come to do all of this.

I agree with the need to come together every three years to talk about regulation. I think that's a great idea. In Newfoundland and Labrador, they are now finally starting to do safety workshops with everybody in the room, post-flight 491.

Also, if you're not communicating almost on a regular basis, and finding a way to communicate, which is why structures are important, then what happened with the *Ocean Ranger* in terms of a design flaw just happened with the S-92.... This is many, many years apart, and we are still facing the exact same problem.

In the case of the S-92, it was studs. We knew there was a problem with those studs, because we almost had a crash the year prior in Australia, in which this problem was discovered. It was fixed there, and a directive went out to the manufacturer of the helicopter saying that they need to change these studs. Instead of it happening immediately, the regulators involved gave people a year, I think, to change these studs, instead of having immediate action, and because they gave them that amount of time, we lost 17 workers in the offshore.

These design flaws are still a problem, and we're not able to quickly react when something happens in one part of the world to make sure it doesn't happen somewhere else. Communication, as Commissioner Wells said throughout his report, with everybody involved in the industry is key, and structures are one of the ways in which we can achieve that.

**Hon. Geoff Regan:** Thank you.

**The Chair:** Thank you, Mr. Regan.

We'll go now to Ms. Block, followed by Mr. Allen, and then Mr. Cleary.

You have five minutes each, please.

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** Thank you very much, Mr. Chair.

I join my colleagues both in welcoming you to committee and in thanking you for being here.

This has been a very interesting review of this legislation. I am encouraged by your responses to my colleague's question at the beginning of the questioning when you mentioned things like the fact that ambiguity has been addressed and that jurisdictional uncertainty will decrease. Certainly, that speaks to the hierarchy of responsibilities which I think has been addressed in the drafting of this legislation.

We've also noted that this has taken a long time. It has taken at least 10 or 12 years to get this legislation to this point. One of the things I've picked up on from you, Ms. Pike, is I think your statement was that fundamentally you didn't think there would be any big changes, but there would be more teeth with the legislation in place.

We heard last week from one of the witnesses that industry has been developing its own health and safety standards where current health and safety legislation has been insufficient or somewhat non-existent. I want to get a sense from you of what steps were taken by industry and the regulators to ensure that the offshore workers were better prepared and equipped to deal with health and safety issues during that time when we didn't have this legislation.

• (1635)

**Ms. Barbara Pike:** I'm not sure about industry so much as what the regulators have done in setting up occupational health and safety committees. I was involved in one 10 years ago, probably, in a meeting in Newfoundland. At that time I was in another position with a think tank here in Nova Scotia. I was asked to attend a meeting in Newfoundland which brought together occupational health and safety committees, as well as regulators from Norway, to

talk about occupational health and safety and the committees and the various reporting and risk assessments.

Those committees have been set up, and they have had various safety forums in Newfoundland with the workers, and also here in Nova Scotia, depending on what ship they're working on, but on the rigs, on Sable, and on *Deep Panuke*, when it's commissioned, and also on those in Newfoundland. That's really what they've been doing, and they continue to.... My experience has been that the staff at the boards are in constant touch with other international regulators and will learn from them. There's a clear exchange of information constantly.

**Mrs. Kelly Block:** Thank you.

We know that Bill C-5 mandates the involvement of workers in the safety processes. We heard again last week that workers can benefit from being actively involved in health and safety in those processes, in other words, helping to create the culture of safety that we've spoken about. I believe that goes well beyond reporting dangerous work situations or conditions, or refusing to work if they feel there is a dangerous situation.

I'm wondering if each one of you could speak to this and share how important you think it is that workers are involved in the health and safety processes and moving beyond those two issues that I cited.

**Ms. Barbara Pike:** It is critically important that workers are involved, to see that what they do makes a difference. Again, it goes back to we can have as many regulators as we want, as many safety officers as we want, as many rules as we want, but unless it's instilled and unless people truly believe it, then they're not going to live by those rules.

I'll use an example. I was at a conference in Moncton on TransCanada's energy east project. Suncor was there as well. People started buzzing to go up because three of their workers were driving from one site to another, stopped to get gas, and when they were filling the windshield washer tank, they spilled a bit, and they had to report that as an environmental spill. Most people wouldn't even think about it, but that's how strongly it has to be enforced. It's not only that workers have the right to refuse, but workers are also going to have to understand that they can be reported if they don't follow the safety rules.

That is where you get a culture of safety, and that goes into all of it. I can walk into a member company's parking lot and I can tell you whether they have a culture of safety in that workplace or whether they're just paying lip service to safety. It comes in everywhere, from how they park their cars, to how things are set up, to what signage they have around their office buildings.

**Dr. Susan Dodd:** I'm not happy with the way I responded to the question about political will earlier. The political will is always rooted in the community, and for the community to be able to express the level of acceptable risk. Right? You can't eliminate risk.

The final decision on the level of risk should rest with the community. The only way for that to happen is if there's effective communication about the work conditions. The only way that can happen is if workers are involved in the safety committees.

I think the question of political will is rooted in the safety committees and having workers directly involved in discussing with everyone else. That's how to develop a safety culture.

• (1640)

**Mrs. Kelly Block:** Thank you.

**The Chair:** Thank you, Ms. Block.

Mr. Allen, for up to five minutes.

**Mr. Mike Allen:** Thank you very much, Mr. Chair.

Thank you to our witnesses for being here today. I appreciate your testimony.

Ms. Dodd, I appreciated very much your personal story, the very helpful journey you've had on this, and sharing that with the committee, .

When you look at it from that perspective, you said some of these things take a long time to change for various reasons. We talk about governments, and then back and forth between the provinces and the feds on this. We've been 10 or more years in the making of this one. We've already had the mirror legislation passed in the two legislatures in the provinces.

I'll start with Ms. Payne.

In spite of the comments with respect to the overall regulator, and I'll get to that in a moment, do you see any reason that we shouldn't move forward with passing this legislation now rather than creating another football going back and forth?

**Ms. Lana Payne:** Oh, God, no, you have to pass it. We can't go back.

I just think we could be so much further advanced if the full commitment had been there when we started this process. You can imagine where we would be now, 10 years later, I think, in terms of lessons learned.

I agree, too, that workers have to be part of the process. That's a no-brainer. But in Commissioner Wells' report, and I think this is key to this question of laws are important, we could also be doing things without having you tell us that this is the law. If there was enough will among stakeholders, you could really build a lot of great best practices.

Commissioner Wells talked about what he referred to as the Swiss cheese model of safety. You probably have heard about it before. Workers certainly are one of the ways we can stop and plug some of the gaps that we can see, if they're properly engaged and if there are proper communications in that regard. There's no reason there can't be more dialogue happening among stakeholders. We should not need to have a government statute that says that this is what should occur. As adults we should be doing this anyway. There are enough examples in the world. Yet in order to get the parties to take it seriously, it seems we do need to have legislation and structures to support that happening.

So, yes, you need to pass it, is the short answer.

**Mr. Mike Allen:** Are there any other comments from the other two?

**Ms. Barbara Pike:** Oh, pass it.

**Dr. Susan Dodd:** Yes, and also have a stronger commitment to research and development that I do not think will come out of industry spontaneously.

**Mr. Mike Allen:** Okay, thank you.

I'd like to take it to the chief safety officer. When we had our witnesses in last week from the offshore boards, as well as the representative from the operators, and when you read through the bill, it is clear the safety officer has a lot of power, which is awesome. Basically, they can shut it down if they see anything that is a clear or present danger to anybody.

Do each of you three agree that's very clear in the provisions of this agreement, that they can shut it down as an independent safety officer?

**Ms. Lana Payne:** It's clear. Actually, in Norway a worker can shut down the rig, based on their legislation. I think it's important that the safety officer has that kind of power. Whether or not he'll use it is another matter.

**Ms. Barbara Pike:** I think it's important they have that power.

**Dr. Susan Dodd:** There's another place where political will can come in. In the event that someone does shut down an operation, they should be supported in that.

**Mr. Mike Allen:** Okay, thank you.

One of your comments, Ms. Payne, was on keeping up, and sometimes it's hard for government, even legislatively. It took us 10 years to get to where we are today, and keeping up is always going to be a challenge, even in regulatory. The chief safety officer can actually do some substitutions. I think you said they're interfacing with Norway and others all the time so that they're learning the best practices, the safety equipment, all those types of things, so if there's something new and better that's coming along, they can actually do a substitute, rather than waiting for the regulation.

How helpful is that?

• (1645)

**Ms. Lana Payne:** I think that's very helpful as long as we're increasing the standard. We have to be very careful about that because sometimes that's not always the case. The substitution, as long as that means things are being boosted, I would agree, can be quite effective.

**Mr. Mike Allen:** Okay.

Are there any other comments?

**Ms. Barbara Pike:** The conditions that are applied to authorizations offshore are able to reflect best practices and lessons learned, and it has been an effective way that the regulators have been using in order to move forward with what has been learned in the industry over the past 20 years.

**Mr. Mike Allen:** Thank you very much, Mr. Chair.

**The Chair:** Thank you, Mr. Allen.

We go now to Mr. Cleary, for up to five minutes.

**Mr. Ryan Cleary (St. John's South—Mount Pearl, NDP):** Thank you, Mr. Chair, and thank you to the witnesses.

My questions are for Ms. Payne.

Ms. Payne, Justice Robert Wells appeared before this committee last week. One of the questions I asked him was whether or not the Canada-Newfoundland and Labrador Offshore Petroleum Board or the Canada-Nova Scotia Offshore Petroleum Board could be in a potential conflict of interest, because they are responsible for overseeing the environment, industry regulation, and health and safety. His exact response was, "It could."

You also mentioned in your presentation a potential conflict. I want you to comment on that. Also I have a part (b) to this question.

In recommendation 29 from Justice Wells' report, part (a) is very well known in terms of an independent offshore safety regulator, but there's also part (b). Part (b) talks about the creation of "a separate and autonomous Safety Division of C-NLOPB, with a separate budget, separate leadership, and an organizational structure designed to deal only with safety matters."

Are you satisfied that (a) or (b) has been followed through?

**Ms. Lana Payne:** No, (b) would be better than nothing, but (a) should be the standard we're trying to reach.

If you look at even the C-NLOPB's organizational chart as it still stands on their website, it's very clear that the safety officer is under the CEO. I'll use an example of why I think this is problematic. In the annual report following the crash in 2009 the message of the then CEO of the offshore oil regulator—this is after we had this horrific loss of life—in that report was about how well industry was doing, that it was a banner year economically in Newfoundland and Labrador. It was also a year in which people died in a crash and yet that was secondary in his message in this annual report.

I think that says it all about when you have production, and economic decisions, and safety under the same roof with the same people making the same decisions. I firmly believe, as in Australia, the U.K., and Norway, that these must be separated.

This is a very long discussion that we've been having since Justice Cullen's report, and yet in Canada we still have not done this.

**Mr. Ryan Cleary:** I have another question, Ms. Payne. You mentioned the July 2011 incident and how the severity of that incident wasn't reported for two years. The helicopter went down and it came within 38 feet of crashing into the water. I believe it fell 152 metres in 32 seconds. What would have been different if that incident happened at night? This has to do with the debate about night flights.

**Ms. Lana Payne:** There are two things with that, and I think this also speaks to why we still have challenges with the regulator. Neither the regulator nor the oil operators expressed the severity of this incident. It was a couple of words when it happened. It didn't seem like it was a big deal. They felt they had done their job by reporting it to the TSB, and yet we had just finished a commission of

inquiry that said we must be improving communications at all levels, and that still had not occurred.

I'm sorry, what was the rest of that question? Yes, the issue of night flights.

At the same time this was happening, we had a helicopter safety committee looking at recommendation 12, which is the mandate that was given to this safety committee, which was not exactly what Commissioner Wells intended in his report. We are now having a debate in our province about whether or not we should be returning to night flights. We are opposed to them. We think they are riskier. We don't think that enough improvements have been made and we're still dealing with the helicopter—

● (1650)

**Mr. Ryan Cleary:** Ms. Payne, I'm sorry to interrupt, but again, if that July 2011 incident had happened in the dark, would it have been a different outcome?

**Ms. Lana Payne:** It would have hit the water, because they wouldn't have been able to see. The only reason the pilot was able to self-correct was that within just feet of hitting the ocean, suddenly they came out of the fog and he could see that they were 30 feet from the ocean. At night that would not have occurred.

**Mr. Ryan Cleary:** When Justice Robert Wells was giving testimony last week, he outlined all the different improvements in the health and safety and equipment aboard these helicopters. Have advancements been made in the helicopters and in the health and safety equipment aboard these helicopters to make a difference between day flights and night flights, though, since then?

**Ms. Lana Payne:** We still only have a helicopter that has an 11-minute run-dry capability. To this point of how much you don't need regulation because people should be doing things on their own, we were for 10 years trying to get underwater breathing apparatuses for the workers. That was not done until 17 people lost their lives. It seems to me it ends up being this disaster-driven situation where people have to die before things are taken seriously.

There have been improvements in the offshore. How could there not have been with the focus and attention that we have had on offshore safety? Are we where we need to be? Absolutely not.

**The Chair:** Thank you, Mr. Cleary.

We have Mr. Leef, followed by Ms. Duncan, and Mr. Zimmer, with five minutes each.

Go ahead, please, Mr. Leef.

**Mr. Ryan Leef (Yukon, CPC):** Thank you, Mr. Chair.

Thank you to all our witnesses. We've heard some great testimony from a lot of witnesses on this piece of legislation.

We're talking about the worker safety aspect. The Atlantic is far away from where I come from, being the member of Parliament for Yukon. I appreciate that much like the Canadian north and the Canadian Arctic, there are a lot of unique challenges in the Atlantic region which would be very different, but nonetheless unique to the region and create some challenges.

We talk about industry involvement and then government legislation and our ability to legislate changes. We keep moving back and forth between legislators asking questions and witnesses testifying about how far we should go with something before it either becomes too prescriptive or not predictive enough of the challenges that exist in a particular region in Canada. Then there is, of course, where we're going with technology.

I will give an example, although it does not compare necessarily to Atlantic Canada. I was up in Raglan mine this year and saw a wonderful piece of highly innovative equipment that is meant to protect workers from exploding tires, those great big truck tires. There is this amazing piece of technology to put the truck tires in which is shockproof so that if the tire does explode, the explosion is contained. This is only possible because technology is at the point where we can actually do something like that.

Justice Wells did talk a little bit about some of his recommendations and where technology has gone since that point, around FLIR, forward looking infrared radar, auto-hover capability, and 15- to 20-minute wheel-up times. He described it as the package of goodies that pilots now have.

Maybe I'll just get each of you to give a quick comment about what we do as legislators to make sure that we're putting on the books something sufficient enough to deal with current day issues but which is still flexible enough to deal with changing times. This would be in terms of innovation and in terms of the unique challenges faced in this particular region as it relates to Atlantic Canada.

I'll start with you, Ms. Payne, and then we'll move to Ms. Dodd, and Ms. Pike after.

• (1655)

**Ms. Lana Payne:** That is an excellent question, if I do say so myself. I actually think we might look at a possibility of doing a review of regulations or getting people together on a regular basis to look at things and maybe come up with best practices.

In other areas where we might be facing the same sort of thing, we've had cases where legislation is reviewed on a regular basis. That's a good thing, especially when you're dealing with health and safety or with an industry like the offshore oil and gas one where technology is virtually changing daily. Five years ago, we wouldn't have been drilling 500 kilometres offshore, and we're doing that today. In order to have a proper safety regime to address that, as opposed to drilling in a basin where it's not as deep, you need the ability to come up with rules around that, for sure.

**Mr. Ryan Leef:** Great, thank you.

Ms. Dodd.

**Dr. Susan Dodd:** I'm just thinking that the ideal situation would be to have a stand-alone safety agency that is brilliantly resourced

and has both the power to police and the ability to constantly consult with industry. There is no keeping up with industry. The technological developments are always going to be ahead of the regulators, and the best way to deal with that is to try to integrate all of the stakeholders in an ongoing conversation somehow about noble practices, which are practices that are as good as they can be and that inculcate a kind of pride in safe production.

I don't think it will work if you just start with a conflict approach and think you can police these organizations. I don't think our political situation is such that we would be willing to invest as much as we would need to invest to make it work.

**Ms. Barbara Pike:** Regulatory review is definitely advantageous as well as having rules and regulations which are not so descriptive that they limit the regulator from enforcing and adapting to latest practices, latest technologies, and lessons learned.

One thing to remember as we look at our offshore regulatory regime versus that of the U.K., Norway or Australia is that they have only one federal regulator for their offshore. In Canada, we have the NEB, the C-NLOPB, and the CNSOPB, with the possibility of the CNBOPB, and the Quebec....

That makes changes to regulations a lot easier. I think a regular review, and making sure that you don't make those regulations so tightly defined that it doesn't give the regulator the ability to actually regulate....

**The Chair:** Ms. Duncan, you have up to five minutes. Go ahead, please.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** We've had a fair bit of testimony on this, and I just want to commend all three of you. I'm finding your testimony invaluable. I really appreciate it. In many ways, it's unfortunate that we couldn't have heard your testimony before the legislation was tabled.

On that theme, following up on my colleague's comments across the way, most federal environmental legislation now includes a provision that calls for a five-year review. That's being implemented because, like occupational health and safety, environment evolves over time with R and D. It puts pressure on the regulator to monitor whether things are effective. Generally speaking, they've been open reviews so that all interested parties can participate.

Presuming that all the parties to this legislation would be supportive, would the three of you support an amendment to this bill to require that the government have a five-year review and that there be a report to Parliament, a review that would engage all interested parties?

**Ms. Lana Payne:** Yes.

**The Chair:** Ms. Pike, go ahead.

• (1700)

**Ms. Barbara Pike:** It's difficult to say.

Saying that we're going to go five years is limiting. What happens if a year from now something really big happens, some innovation in the industry that we want adapted immediately? I guess I'd have to take a look at it.

**Ms. Linda Duncan:** Ms. Dodd, go ahead.

**Dr. Susan Dodd:** I agree with both responses: a review every five years, yes, and an ongoing commitment to adapting.

**Ms. Linda Duncan:** Great.

Actually, Ms. Pike, that is a good point. A five-year review does not preclude the governments and the regulatory authorities and so forth from reopening and seeking amendments. Good for you for raising that.

Professor Dodd, you raised my favourite topic. I used to be an environmental enforcer. I'm a broken record on this: it's fine to have good legislation, but if you don't have a commitment and a strategy for effective enforcement, then it's of little value. It wasn't me who first said that. It was a former Conservative member of Parliament in the Mulroney regime which actually tabled the first enforcement compliance policy. In their environmental legislation, they required that the provinces, if they wanted to claim equivalency, had to have equivalent enforcement compliance policies.

I want to thank you for raising that issue.

Perhaps I could have a comment from all three of you. Do you think that even if it wasn't added into the legislation, it could be a topic for consideration, if there is a five-year review and every five years thereafter, of the requirement for an audit now before the legislation is even in effect, of the capacity for staffing and skills? This is to be sure that we can implement the legislation to the level that you hope.

**The Chair:** Ms. Dodd, do you want to start?

**Dr. Susan Dodd:** That sounds fine to me.

**Ms. Barbara Pike:** It sounds interesting, and I'm sure it's something that the boards can probably provide to you quite readily.

**The Chair:** Ms. Payne, go ahead.

**Ms. Lana Payne:** To add to that, I was just reading about the aforementioned international regulator conference. The latest one was in June of this year, when the CEO of the Australian regulator spoke. She was very strong about the need to have training expertise and properly resourced regulators. I suggest all of you have a look at her remarks. They were very good. Equating worker safety with the environment is quite worthwhile if we're looking at trying to advance what we have here in Canada.

**Ms. Linda Duncan:** That's great feedback.

I think it was Professor Dodd who made a point—and this is invaluable not only for offshore work, but certainly also for what we're seeing in train traffic, and so forth—about ensuring that the rules and the regulations they're under, and the procedures, be directed at preventing incidents. We don't just have changes, wait for a disaster, and then have a knee-jerk reaction. I appreciated that. Actually, I think all three of you made recommendations for future legislation, i.e., there could be changes, but even without additional legislation.

I just wanted to ask if the three of you also provided submissions to the governments of Newfoundland and Nova Scotia. We're told they have already signed off on legislation so it's very awkward for the federal government to bring forward any amendments. I'm wondering if any or all three of you proposed any of these issues to those two governments, what the response was, and if you think they

would be open in the future to strengthening the legislation along the lines you were suggesting.

**The Chair:** Ms. Pike, do you want to answer that first?

**Ms. Barbara Pike:** We did make our position known to the Nova Scotia government. We did not present to the Newfoundland and Labrador government. For the most part, our member companies are in Nova Scotia, New Brunswick, and Prince Edward Island, although they operate, obviously, in both offshore jurisdictions.

Yes, I basically presented the same as what I've said to you here.

**Dr. Susan Dodd:** I did not present.

**Ms. Lana Payne:** I did. We made recommendations around the right to refuse, because the consultation documents actually had a watered-down version compared with what we have now.

We also recommended the advisory council, which we're pleased to see, and an independent safety officer, which we felt was critical. Obviously we recommended the stand-alone safety authority.

●(1705)

**The Chair:** Thank you, Ms. Duncan.

We now have Mr. Zimmer, followed by Mr. Julian, and Ms. Crockett.

Go ahead, please, Mr. Zimmer.

**Mr. Bob Zimmer (Prince George—Peace River, CPC):** Thank you, everybody, for appearing at the natural resources committee today.

I have a question for Barbara specifically. As I've said at committee before, I worked in the oil and gas industry when I was a young guy, about 19 years of age. Since then the industry has changed quite dramatically, although it was safe even at that particular moment. I think 1985 was when I entered the industry.

I saw a dramatic shift from what I considered to be already safe to extremely safe. We had safety officers who would go around regularly to monitor and make sure practices were done the way they were supposed to be done. I saw a dramatic shift.

What can you say to speak to that, you know, from the days of the *Ocean Ranger* and that? Have you seen a considerable shift in safety since then?

**Ms. Barbara Pike:** I think I see a shift in safety. It just continues on a year-to-year basis, both onshore and offshore. In the energy industry in general, the oil and gas companies have driven that.



One of the things that, as we go around—remembering that our membership is the supply chain—we have supplier information sessions for wind projects, for the Maritime Link Muskrat Falls project, or for one of the offshore projects. One of the things that all of the procurement people will say up top to any of the contractors, anybody in the supply chain, when we are taking a look at bids, is that number one on the list is safety. If you do not have a safety culture, if you do not have the proper registrations, if you do not have the people who are properly trained, then you're not going to get a contract. You're not going to be on the bidders list.

I think it continues to improve. I've seen it going from a sort of lip service to really being the culture of safety, from the industry, the actual operators, and now we're seeing that in the supply chain. If you go to the larger companies that are involved in the supply chain, their safety programs in their offices and on their work sites are improving dramatically. That's beginning to ripple down into even the smaller mom-and-pop operations.

**Mr. Bob Zimmer:** Right.

Can you explain a little bit about...? You talked about incentive. You mentioned going from lip service to where it was something you had to do as opposed to something you wanted to do.

Over the number of years that I was in the industry, and now as a member of Parliament, I've seen it shift from where you had to do it because you had to, to where you really wanted to do it. It became part of the company mantra, in a way, that ultimately, because of worker safety, things would be better. It was even better for the bottom line. It was really better all around.

Can you explain the incentive, in terms of a company perspective, to the safety regime we have today?

**Ms. Barbara Pike:** One of the things that has been mentioned to me, not only by operators but by the larger contractors, is that it's not only the job to make sure that every person who goes to work in the morning comes home safe at the end of the day—that is ultimately important—but the other thing is that the bottom line, the cost, of not having applicable culture safety, of not having those safety rules, is astronomical. They will say that on a regular basis. Whether that is because of increased costs for benefits, for insurance—just those losses—in the end it's about making sure everyone comes home safely, and it does affect the bottom line.

**Dr. Susan Dodd:** May I speak to that briefly?

**Mr. Bob Zimmer:** I actually have a question for you, Ms. Dodd, if you don't mind. My time is limited, and I have a question for you.

Certainly my sympathies go out to your family for what you have lost. I have had members of my family in the industry and haven't lost them. They've come home safe and have felt safe.

I want to ask about your family. Does your family still work in the industry? How do they feel with regard to the same question that I asked Ms. Pike about incentive? How have you seen safety change in the last 30 years in the industry? Do you have members of your family that can attest to that? What's your position on what you've seen?

**Dr. Susan Dodd:** One of my brothers used to teach hydrography at the University of Southern Mississippi, so he worked through that side of the industry. Otherwise nobody in my family is working in

the industry. My father was in the air force, so on the search and rescue side we always kept kind of plugged in there.

On the changes, it is very hard to imagine that things could be worse than they were in 1982 on the *Ocean Ranger*. There is no polite word for how bad that was in terms of the mismanagement of that rig, and not just around basic operations of that oil rig and into the evacuation problem.

I would like to say something about the costs.

• (1710)

**The Chair:** Mr. Zimmer your time is up.

**Dr. Susan Dodd:** The actual cost to the ocean drilling and exploration company was that they paid \$20 million in lawsuits.

**Mr. Bob Zimmer:** I'm sorry. I need to finish my question because I'm out of time here.

**The Chair:** Go ahead, Mr. Zimmer.

**An hon. member:** Is he out of time, or not?

**Mr. Bob Zimmer:** I know, but the respondent was trying to answer another question, so I was trying to bring it back to where it was.

That's fine. I'm done.

**The Chair:** Yes, you are, like toast.

Mr. Julian, for up to five minutes.

**Mr. Peter Julian:** Thank you, Mr. Chair. It's always interesting at natural resources.

I would like to thank the witnesses for coming here tonight. We deeply appreciate your testimony.

Ms. Dodd, we are very sorry for your loss. The testimony you're giving is very compelling, I think in part because of your personal connections.

I just want to note that subsequent to Ms. Duncan's comments about possible amendments and looking at a review, your comments have been very helpful. Those are amendments that we intend to bring in when we discuss this bill in the next few days.

We know that the Newfoundland and Labrador government supports an independent regulator. That issue has come up repeatedly because of the concerns that you, Ms. Payne, and Justice Wells mentioned on the potential for regulatory capture.

This has been helpful, but I would like to come to an unanswered question. The unanswered question that has been raised a number of times as we've gone through the hearings around this bill is the issue of the run-dry capability that the Transportation Safety Board very clearly indicated needed to be dealt with. Mr. Harris referenced it in his question as well. We have a Transportation Safety Board recommendation for a 30-minute run-dry capability. We know the implications of not having that, and yet there has been a resistance to implementing that.

When the C-NLOPB appeared before the committee, we asked them point blank why that had not been put into effect, and there was no clear answer. We've continued to ask this question. It appears that it may have something to do with cost, but we have not been able to confirm that.

We have an issue where clear action needs to be taken, and because of a lack of an independent safety regulator, potentially, there seems to be an inability to put into place what is common sense, particularly in light of the ongoing dangers in the offshore.

I would like to ask each one of you, do you think in some way it may be a lack of an independent safety regulator that is slowing down the implementation of the Transportation Safety Board's recommendation to have 30-minute run-dry capability for offshore helicopters?

**Ms. Lana Payne:** I believe the regulator we have right now could say that the helicopter operating in our offshore should have a minimum of a 30-minute run-dry capability, but it refuses to do so. That's partly perhaps because the oil companies have a contract with Cougar Helicopters to provide transport service, and until that contract is up, we're stuck with it, which is quite unfortunate.

**Mr. Peter Julian:** Ms. Payne, do you think that may have something to do with the cost of breaking the contract? I'm trying to figure out what the reasons underneath that are.

**Ms. Lana Payne:** We should be very clear about how much money these oil companies are making in our offshore. Thirty-seven per cent of Newfoundland and Labrador's GDP goes to corporate profits. A big portion of that 37% goes to oil companies. We can afford to have a higher standard helicopter operating in the offshore; we just do not have it at the moment.

I don't understand why we continue to have this discussion around the 30-minute run-dry technology and why our regulator hasn't already implemented it. I don't know if they're waiting until this contract is up. I don't know if they're blaming it on costs. There is no reason. This is a very profitable industry. At the very least, they could say that when this contract is up, this is going to be the requirement. That would be the minimum they could do.

• (1715)

**Mr. Peter Julian:** It hasn't happened yet.

Ms. Pike or Ms. Dodd, do you have an answer to that question that we've been unable to get a response to?

**Ms. Barbara Pike:** I should point out that Cougar Helicopters is one of our member companies, but in fact, whether it's an independent safety division or not, there needs to be clarity as to whether Transport Canada has the regulatory authority to make those orders or whether the C-NLOPB or the CNSOPB has the regulatory authority to make those orders. I think that's what it comes down to.

We're sort of down into the weeds here a little bit I guess, but under the same line, we haven't discussed cutbacks to offshore or to search and rescue capabilities particularly in Newfoundland, if we want to be talking along those lines and down into the weeds like this.

**The Chair:** Thank you.

Ms. Dodd.

**Dr. Susan Dodd:** The question of these helicopters is far out of my area of competency, but I would reinforce raising the question about positioning the search and rescue helicopters and also about who should pay for them. It's not obvious to me that it should be coming directly from taxpayers. I see no reason why industry should not be called upon to provide a search and rescue station out of St. John's.

**The Chair:** Ms. Crockatt, you can have one very short question, and it will need a short answer.

**Ms. Joan Crockatt (Calgary Centre, CPC):** I just want to address this, please, to Ms. Payne.

We had the benefit of having Justice Wells before the committee recently. He said that twenty-eight and a half out of twenty-nine recommendations that he had made were being implemented, that they were either already implemented or in the course of being implemented and that he wasn't fussed about that last one. He thought the way we were going was getting us to the same end. Overall are you happy with this report? Do you think it has dramatically improved safety in the offshore industry with Bill C-5?

**Ms. Lana Payne:** Yes. I think this will be an improvement over what we currently have.

**The Chair:** Thank you, Ms. Crockatt.

We're going to have to leave it at that.

I want to thank all three of witnesses very much for being here today. I think you've been very helpful in our study of this legislation. I wish you all the best and a very merry Christmas in particular.

We will suspend for a couple of minutes, but before I do that, Mr. Harris, to your point on the questioning time, you actually had ten and a half minutes in a seven-minute slot, which was by far the longest time, so I watch that and consider that. All the five-minute questions were very similar in length for time.

**Mr. Jack Harris:** My only point was whether or not it was a point of order or not.

**The Chair:** It could be if I wanted to deal with it, but I didn't.

We will suspend for a minute or two.

*[Proceedings continue in camera]*







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