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Chair

Mr. Alan Tonks

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Thursday, December 2, 2004

• (0910)

[English]

The Chair (Mr. Alan Tonks (York South—Weston, Lib.)): Good morning, members of the committee, ladies and gentlemen.

The orders of the day, pursuant to the order of reference of Tuesday, November 2, are Bill C-15, an act to amend the Migratory Birds Convention Act, 1994, and the Canadian Environmental Protection Act, 1999.

Members of the committee, for your information, we have ministry officials here as reference, as we proceed through the bill. We have Trevor Swerdfager, director general of the Canadian Wildlife Service; Steve Wendt, assistant director, migratory birds branch; Asit Hazra, chief, prevention and recovery division, environmental emergencies branch; Michel Arès, senior counsel, legal services, Environment Canada; and Susan Waters, legal counsel, legal services, Environment Canada.

Thank you for being here.

We have other officials who are in the audience: Nadine Levin, senior policy specialist from environmental protection service; Paul Topping, head of ocean disposal and marine protection programs; Hélène Lévesque, migratory birds regulations specialist; Katherine Dickson, senior waterfowl biologist; and Régent Lalonde, chief of operations, wildlife enforcement.

We have quite a coterie of individuals with a variety of insights, relevant experience, and jurisdictions to assist us, if required, as we go through the bill.

Members of the committee, the chair has before it amendments put forward by Mr. Mills and Mr. Simard. The amendments relate to clause 9. If there are no problems with proceeding in this manner, my suggestion would be that we go through clause by clause. There may be clauses that have no problems, but when we get to the clause where the amendments have been made, then we will obviously deal with those amendments.

Mr. Mills, I believe that you and Mr. Simard have had some discussion with respect to the amendments, to some extent.

• (0915)

Mr. Bob Mills (Red Deer, CPC): Yes. I would like to ask the officials a question about that whenever you get to it.

The Chair: Okay. Mr. Mills, when we get to clause 9, I think we can then involve the officials and have an open discussion.

Is that okay, Mr. Simard?

Good. Thank you.

If you look at the order paper, I would suggest that we simply go through the clauses. I'll direct you to that. You have the bill before you. I'm going to ask whether the clauses shall carry, and I'll go through it in that manner.

(Clauses 1 to 3 inclusive agreed to)

The Chair: We'll slow down, Mr. Gagnon. Sorry about that.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Clause 2 can carry on the basis that it's subject to any amendments that might come forward. The definitions section is obviously reflected in the entire bill.

The Chair: That's right. I think that goes for when we get to the bill itself, as amended. I think it's subject to any other definitions or changes that are of a minor nature.

Ms. Yasmin Ratansi (Don Valley East, Lib.): I'd like to make a suggestion. Could we move through clauses that do not have any changes, so that we can go a little faster?

The Chair: The chair is always open to suggestions. If you want to move them in blocks, if I may use that term, that's fine. I could have received a motion, "Shall clauses 1 to 8 carry?"

I'm going through them individually to begin with so that members get a sense of the rhythm. If there are any they wish to hold, it's a little easier to do so this way. So let's leave it until we get up to clause 9. I'd like to do them individually.

(Clauses 4 to 7 inclusive agreed to)

(On clause 8)

The Chair: Mr. Mills.

Mr. Bob Mills: In clause 8, the witnesses who were here before said a game warden is going to be able to board a ship. I understand that's not correct, that in fact someone from Transport or somewhere needs to be.... I mean, it can't just be a game warden standing on the shore, looking off with his binoculars, who takes his motor boat out and boards a ship. That's what they were implying.

Can the officials just clarify who boards the ship?

The Chair: Ms. Waters.

Ms. Susan Waters (Legal Counsel, Legal Services, Department of the Environment): It is the enforcement officer, but they cannot exercise those powers without the consent of the Attorney General, so they have to have gone through the necessary consultation and approval process.

Mr. Bob Mills: That answers it, yes.

The Chair: Mr. Jean.

Mr. Brian Jean: On that very note, I notice that under international law conventions you need a member of Transport Canada, in essence. Is that correct?

Ms. Susan Waters: That's not correct. They don't go into that detail, to look at which level of official in the department would have to accompany them under international law.

• (0920)

Mr. Brian Jean: So why is there a reference that somebody from Transport Canada needs to be there?

Ms. Susan Waters: I'm not sure on that point.

Mr. Brian Jean: Is it simply for boarding or exercising the power of seizure?

Ms. Susan Waters: The game officers here have the enforcement powers under the act that have been provided by Parliament. A safeguard we've provided to ensure they exercise powers in accordance with international law is that the law requires them to get the consent of the Attorney General, so they will be coordinating and collaborating with Transport Canada, I understand. That is the intent.

The Chair: Mr. Simard.

[Translation]

Mr. Christian Simard (Beauport—Limoilou, BQ): I'd like to stay on this subject, to get a better grasp of your response. Is that person acting on a general warrant? Excuse me, Ms. Waters and Mr. Wendt, but I'm curious about one thing. Each time an offence is witnessed, must that person obtain in advance, before taking any action, the authorization of the Attorney General, or is this general authorization conferred upon him by virtue of the fact that the act is in force? If in fact he must coordinate his actions with the Attorney General and with Transport Canada each time an offence is noted, then the boat is likely to be long gone before any action can be taken.

Will the process be as complicated as this every time?

[English]

Ms. Susan Waters: No, it's not a general warrant. They would need to get the consent every time for every action.

The Chair: Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Forgive my ignorance, but is there a system similar to this right now, where someone has to seek a warrant of this nature? If so, what type of timeline are we looking at? I think the concern expressed is about how cumbersome this process would be to actually get at a ship.

The Chair: Mr. Wendt.

Mr. Stephen Wendt (Acting Director, Migratory Birds Branch, Canadian Wildlife Service, Environmental Conservation Service, Department of the Environment): The intention is to coordinate this activity through a memorandum of understanding

with Transport Canada and the coast guard to put these procedures in place. At the present time, the laws that are being amended, the Migratory Birds Convention Act and the Canadian Environmental Protection Act, apply, but there aren't specified rules for how they would be applied.

That's the reason for the drafting of this clause.

The Chair: Mr. Gagnon.

[Translation]

Mr. Marcel Gagnon (Saint-Maurice—Champlain, BQ): If the boat is in violation of the act and the game officer wishes to board the vessel, how long will it take before he gets permission to do so or obtains a warrant to do his job?

[English]

Mr. Stephen Wendt: There's been some experience of this; it can be done in a matter of hours. By quick action, it is possible to deal with these cases as the boat is moving and perhaps leaving the Canadian economic zone.

[Translation]

Mr. Marcel Gagnon: If I understand correctly, it will all depend on the agreement between Transport Canada and Environment Canada.

[English]

Mr. Stephen Wendt: Yes.

[Translation]

Mr. Marcel Gagnon: Therefore, the act will apply in accordance with the terms of the signed agreement.

[English]

Mr. Stephen Wendt: The law applies currently. The Migratory Birds Convention Act has regulations currently that prohibit the deposit of oil in water. That applies now under the migratory birds regulations. So that's not a new prohibition.

The Chair: Any other questions for officials?

Mr. Wilfert.

Hon. Bryon Wilfert (Richmond Hill, Lib.): I was going to say, Mr. Chairman, that it gives the game warden the power to board where there are in fact reasonable grounds in the exclusive economic zone. They can detain the ship up to 30 days—obviously not indefinitely, but during that period appropriate action can be taken. And if the game warden believes there are in fact reasonable grounds, they will direct the ship to the appropriate port.

The Chair: Thank you for that further explanation, Mr. Wilfert.

Any further discussion on clause 8?

(Clause 8 agreed to)

(On clause 9)

The Chair: Mr. Mills and Mr. Simard, there are two amendments here.

Mr. Mills, I'll go to you first.

Mr. Bob Mills: To the officials, I believe you have Mr. Simard's and my amendment in front of you.

In Mr. Simard's amendment, the last paragraph, part (b), who does that apply to?

• (0925)

Mr. Trevor Swerdfager (Director General, Canadian Wildlife Service, Environmental Conservation Service, Department of the Environment): In this draft?

Mr. Bob Mills: Yes. It says:

(b) the fine imposed under paragraph (1.1)(b) shall not be less than \$100,000.

Does that apply only to the ship that's over 5,000 tonnes?

Mr. Stephen Wendt: In the amendment from Mr. Simard, the way it's written, and the way I'm reading it at this point, part (b) of that would apply in the case of a vessel over 5,000 tonnes. As well, part (b) refers back to the component of the bill dealing with summary convictions.

So it would be that combination—a vessel of 5,000 tonnes deadweight or over and a summary conviction.

Mr. Bob Mills: Then the fisherman, the duck hunter, is not affected by part (b).

Mr. Stephen Wendt: A duck hunter in a small boat would not be affected by that.

Mr. Bob Mills: Thank you.

The Chair: Any other questions with respect to the amendments to clause 9?

Mr. Simard, did you have any questions with respect to Mr. Mills' amendment—or your own?

[Translation]

Mr. Christian Simard: I don't have any questions concerning my own amendment. In light of the response given, I understand that an agreement could be worked out. Basically, Mr. Mills' amendment and my own amendment had the same purpose. Moreover, Mr. Mills must now be reassured by the fact that in proposed paragraph 13(1)(b), the minimum fine that can be imposed is \$100,000, still in the case of a vessel of 5,000 tonnes deadweight or over. In that respect, I think it will be very easy to reach some kind of agreement.

[English]

The Chair: That's been clarified then.

Mr. Mills, with that clarification, are you willing to let Mr. Simard's amendments—

Mr. Bob Mills: Yes.

The Chair: And if that passes, yours become redundant and—

Mr. Bob Mills: Correct.

The Chair: All right. I think we're clear.

Mr. Wilfert.

Hon. Bryon Wilfert: Mr. Chairman, is it appropriate at this point to comment on the amendment?

• (0930)

The Chair: Yes, indeed, speak to it.

Hon. Bryon Wilfert: Mr. Chairman, recent convictions in courts have been around \$140,000. Traditionally, they've been around

\$20,000. The increased fines have resulted obviously because of a higher profile both in the public and in the media generally.

In Canada we rarely have used minimum fines except in such offences as impaired driving, treason, first and second degree murder, and cases of that nature. I think it's important at least to be aware of what role the minimum fines would play. Clearly, the criteria set out in this bill, Mr. Chairman, allow the court's discretion on deciding the sentence. It's important to keep that in mind, because jurisdictions such as New Zealand, Australia, the United States even, have shown that minimum fines have not been effective for purposes of deterrence for most crimes. The Law Commission of Canada in fact has supported this finding.

There is a question, and I don't have a definitive answer, as to whether it would in fact violate the charter under section 12 for cruel and unusual punishment, especially if the minimum mandatory were applied. What often happens is that there's plea bargaining that goes on when you have a minimum sentence situation, and charges could be withdrawn, which is obviously not what we want to see, or dismissed or even discharged. The United States has shown in research that minimum fines remove the incentive for the accused to plead guilty, and obviously that takes more time, more costs in courts, etc.

I would simply point those facts out, Mr. Chairman. I understand the intent of the minimum fine, and I appreciate the intent that both the Conservative and the Bloc members have put forth. But, clearly, there are those issues that I think should be on the table for your consideration.

The Chair: Are there any other speakers to the clause?

Mr. Mills.

Mr. Bob Mills: Just to reply to that, I guess if we had total faith in our court system putting the fines appropriately, what Mr. Wilfert said would be correct. However, if we look at the record, the difference between fines in the U.S. and in Canada are pretty dramatic. As a result, that's why ships—and we're talking about big ships here; we're not talking about the fishermen—have been dumping their bilge water in Canadian waters, because they know the courts are going to go easy on them.

If you look at the record, as we have done since 1996, you have fines of \$5,000, of \$20,000—very small fines. The intent of this is to make those fines substantial enough so they know it's not wise to dump their bilge water in Canadian waters, and of course they don't do it in U.S. waters because of the very record of very high fines. Fines are, some might say, extreme in the U.S. Ships have been fined \$1.5 million. One cruise line, as was mentioned to us, has 20 convictions; \$18 million is their fine. We don't have that here. We have a record of \$20,000 fines, \$5,000 fines. What large company would even worry about that \$5,000 or \$20,000 fine. So that's the purpose of the minimum fines. It's to send a message to them—do not dump your bilge water in Canadian waters.

The Chair: Mr. Simard, then Mr. Jean, and Mr. Wilfert.

[Translation]

Mr. Christian Simard: Mr. Wilfert mentioned a potential pernicious effect which could result, in some cases, in the elimination of excessive proceedings or fines. However, we are seeing this pernicious effect right now because vessel operators in Canada currently have a license to pollute. Since no provision is in place for the imposition of minimum fines, since the courts are not consistent in their rulings and are very lenient, vessel operators go ahead and pollute because they don't get caught very often in Canada. As the Commissioner herself stated and as we have noted, patrols are less frequent than they were ten years ago. No follow-up action is being taken to the MARPOL Convention. The chances of getting caught are very slim and when operators are caught, there are no provisions in place for imposing minimum fines. As I see it, we need to address the problem of operators having a license to pollute, so to speak.

We have to realize that polluting is a serious offence. The *Exxon Valdez* spill was tantamount to ecological murder. The comparison that you made with driving is a good one. It is an argument that is contrary to the one you were attempting to make. Shipping along sea routes which are home to a tremendous variety of species on which coastal communities depend...We talked a lot about migratory birds, but we forget that oil spills will destroy millions of cod and commercial species in their larval state, as these species spawn close to the surface. We're not just talking about birds here, but about the overall highly fragile ecosystem of the Gulf of St. Lawrence.

Therefore, through this legislation which must have teeth, we need to convey the clear message that we mean serious business. I sincerely hope that, regardless of what people may say, this legislation will serve as a strong incentive for people to stop polluting, or, at the very least, to stop polluting Canadian waters. Hopefully, the effect will be global.

[English]

The Chair: Thank you, Mr. Simard.

Mr. Jean, then Mr. Wilfert.

Mr. Brian Jean: Thank you, Mr. Chairman.

The cases that deal with cruel and unusual punishment have primarily dealt with individuals convicted of crimes, and the court has come back to suggest that either the minimum jail sentence or the minimum fine in those cases is not appropriate given the circumstances. In this particular case, I would suggest that we want the courts to take judicial notice of the fact that it is not just a one-off crime, but it is a crime of the entire process and all the ships dumping cumulatively, and that has to be taken notice of. I think the courts will, under a minimum fine.

The Chair: Thank you, Mr. Jean.

Mr. Wilfert.

Hon. Bryon Wilfert: Mr. Chairman, again, the resolve of the government clearly is that we want this legislation through and we want to send a message to potential polluters. The comment that I would simply make is that minimum fines historically have provided a ceiling rather than looking at it as the minimum. In other words, courts have looked at the minimum as being a ceiling itself, which is not what we want to see happen. Obviously we want the discretion

in order to have...depending on the severity of the case. We would like to see them use that.

I've pointed out, Mr. Chairman, that in fact the courts, because of public pressure, the media, etc., have responded significantly...from about \$20,000 to about \$140,000. But I'm concerned in that I don't want to see any minimum become the ceiling.

If I may, Mr. Chairman, through you to the witnesses and to our lawyers, I had raised the issue of the charter with cruel and unusual punishment. Is in fact the imposition of a minimum going to be challenged? Anything can be challenged, I guess. But would it be viewed as constitutional, in your opinion?

● (0935)

The Chair: Mr. Swerdfager.

Mr. Trevor Swerdfager: Thank you, Mr. Chairman.

I just offer a couple of quick points and then pass to our legal counsel on that note.

For your consideration, the first point to keep in mind is that part of the reason we have not had consistently high fines in this country with respect to these kinds of offences is that the current legislation does not apply in the zone we're talking about here. Obviously you can't fine someone under an act that doesn't apply. The fines haven't been high because the charges are not possible, because historically, at least, the act has been perceived not to apply. This bill will fix that particular issue and allow for such fines to come forward.

Secondly, we need to keep in mind that the bill allows for cumulative or multiple charges so that we can apply the fine for multiple offences and ultimately build the fines.

Thirdly, I'd just direct attention as well to subclause 9(3) of the bill, which provides the courts with sentencing guidelines, making very clear the factors they must consider when dealing with the fine.

On the charter issue in particular, I'll pass to Susan.

Ms. Susan Waters: It wouldn't be possible to say now whether a minimum fine would be upheld by the courts or not. We don't have much experience with minimum fines. In the cases that the courts have dealt with, they've included incarceration, so it has been minimum jail time. In some cases, the courts have struck down provisions that have had minimum jail times and have found those to be a violation of section 12 of the charter.

With respect to the monetary amount, I can't opine on that. Certainly, someone can bring that argument. Whether it's successful or not, the courts would have to see.

The Chair: Mr. Simard, and then Mr. Mills.

[Translation]

Mr. Christian Simard: I disagree with that answer. In fact, it's clear that the 200-mile zone is being extended. If the number of offences and fines was generally low in the past, that's because we were working within the 12-mile zone. Whether the 12-mile or 200-mile zone applies, if heftier fines are imposed, perhaps then minimum fines would be viewed as maximum amounts. That would already be a major step forward. If we look at the fines imposed by other countries, we note that in the US, these amount to \$509,000 US, and in the UK, to \$411,000 US. Already we'd be making progress if we moved in this direction.

At this stage, I think it's wrong to say that the legislation already makes provision for minimum fines. If we claim, each time that a fine is imposed, that this could be construed as cruel and unusual punishment, I think the courts will be left to judge the case before them. They will have to ask the following questions: Is the case solid? Is the individual or company guilty of an offence? Then, based on the act's criteria, they will determine the appropriate fine.

In this instance, the legislator is sending a clear message to the courts that Canadians, through their legislation, believe that polluting the environment by spilling oil has serious repercussions for current and future generations and that this offence will be dealt with seriously by the courts. The message being conveyed is therefore clear. After all, we have an elected government, not a government by the courts. We're sending out a clear message, as I believe Canadians want us to do. They are not convinced that the courts are, or ever were in the past, sufficiently aware of the environmental damage that is being done. Because of that, the courts have often imposed fines which have amounted more to licenses to pollute than to genuine sanctions.

That is the reason why we are putting forward this amendment. In my view, it's critically important that we send a message to the pirates of the high seas, to the 5%, or 10%—we don't know the exact number—who show blatant disregard for the environment. As Mr. Gagnon was saying last Tuesday, if we were dealing with airplanes, we'd be very worried indeed.

That is the position that we are defending. I also think we need to convey this message clearly to the courts.

● (0940)

[English]

The Chair: Thank you, Mr. Simard.

Mr. Mills, Mr. McGuinty, and then Mr. Gagnon.

Mr. Bob Mills: Again, speaking to Mr. Wilfert's comments about the minimum becoming the maximum, if that's his biggest concern, then maybe we should make the minimum \$1 million instead of \$500,000. That would certainly send the message that it's the same in our waters as it is in the U.S. waters, and the courts would then know exactly what we were saying. I want to emphasize that this \$500,000 is the minimum. I think that then puts us in line with our neighbours, whereas the fines to date...

The killing of birds has continued. As I have mentioned a number of times, I became very familiar with this back in the mid-nineties. That's when I saw the 300,000-plus birds every year. Those populations can't sustain that kind of killing. If we care about this

issue, then obviously we can't accept the \$20,000 to \$140,000 maximum fine. Obviously, when the Terra Nova spill occurred, ships pulled into that slick and dumped their bilge oil. Well, that's sending a message to us that they're not worried about our fines, they're not worried about those birds, and they certainly aren't concerned about any fine they might get. This message would be very clear that your minimum fine is \$500,000 and that's what you're going to be nailed with. And hopefully it will be higher if it is in fact a flagrant abuse of the situation.

I think we can make an extremely good case for this. We're talking about major companies doing this, if you look back at the records of who has been fined.

I'd like to know something from the officials too. During our briefing, one of the things we were assured of was that this bill will clear up the conflict between Justice, Transport, Environment, and all of the different departments that have been fighting over who should get charged while the offender, meanwhile, sails away without any fine. I'd like the reassurance today, on the record, that in fact that's exactly where we're going.

The Chair: Mr. Swerdfager.

Mr. Trevor Swerdfager: Thank you, Mr. Chairman.

I think it's very clear that we share the objectives that members are talking about here. The question is, how do we go about them?

Certainly the issue that was characterized as a turf war and battle in the previous meeting will, I think, be substantially clarified by this bill. The bill, if it were passed, would make it clear that the MBCA and CEPA apply out to the edge of the economic zone. There was some uncertainty around that previously, and that caused uncertainty amongst the departments as to what applies where and therefore who does what. This bill will eliminate that.

In doubling the maximum fines from the current legislation, it will also make it very clear that the government is serious about this part of the marine ecosystem, the marine environment, and will certainly push that very hard. If the bill is passed in its form now, it will also bring us into line with the U.S. fine structure and regime, and again will send a very clear message to people that Canada is not a place where you can dump.

I think the Terra Nova incident you referred to is a good example of why this bill is needed. I think we are very clearly in a situation in which we have found birds in the last four or five days that are oiled but are not oiled with oil from the Terra Nova spill. It's clear that there is a mystery spill out there, but whether someone has pulled into the slick and dumped, we can't verify. There's no way of knowing that this has in fact happened. But it's very clear that we are finding birds on the shore now with oil that does not come from Terra Nova and is recent.

So the need to apply this legislation out in this economic zone is very real, and we're seeing real-time examples of what it would do.

The Chair: Thank you very much, Mr. Swerdfager.

Mr. Mills, I'll go back to the list I have.

Mr. McGuinty, and then Mr. Gagnon and Mr. Richardson.

• (0945)

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

I have three quick questions, Mr. Chairman, for the witnesses.

Could I pick up on the theme, Mr. Swerdfager, of your last comments? One, will this in fact harmonize our standards here with the American situation in terms of fining? Two, are there minimum fines in other such categories of environmental offences now in Canada? Three, with respect to what constitutes a conviction on indictment or what constitutes a conviction on summary conviction, what are we talking about? If we're going to decree that we want to see a minimum \$500,000 fine, what kind of offence are we talking about here?

I really don't purport to sound, and don't want to sound, like an apologist for those who are bad actors, but in my experience there is always a balance to be struck between good corporate responsible action and government penalties. I'm struggling with whether or not this constitutes an appropriate balance.

Could you help me, Mr. Chairman, and maybe help the committee through those three questions?

The Chair: Mr. Swerdfager, please, as appropriate.

Mr. Trevor Swerdfager: Thank you.

Just to take these three questions in turn, it's harmonization with the U.S., other minimum fines, and then summary versus indictment.

The way the enforcement of environmental legislation in the United States works is a little different from here because the countries are different. In particular, in the marine zone, operational circumstances are different. We couldn't say there's a direct line or analog between the Migratory Birds Convention Act and what in the United States is known as the Migratory Bird Treaty Act.

The two pieces of legislation, whilst they deal with similar topics, are structured differently and operate differently, as does the enforcement of maritime law in the U.S. I couldn't point out to the committee, here's Bill 1 in the United States and here's the bill we're dealing with here and they line up perfectly. The structure is different. If the government were to move it forward, though, what we're doing with the passage of this bill is to harmonize the fine regime with that of the United States in such a way that would ensure that maximum fines available to the courts in this country are similar to, if not identical to, those available in the United States.

Again, I emphasize that the operational circumstances and the ways in which the laws are applied vary because the operational reality of the United States' system is different from ours. There is not a direct, one-to-one correlation between the two pieces of legislation that have the word "bird" in them, if you will. But what this act would do is bring the fine structures into line with those in

place in the United States and, I should emphasize, in other countries as well. Obviously the U.S. link is the most important one given the contiguous nature of our countries, but it's not the only one to keep in mind.

Are there minimum fines in other environmental legislation in the country? I'm not aware of them. If they do exist, they're not something we've spent any...I don't think they do. They're not a concept that has characterized Canadian environmental legislation, nor are they something that is very common in the environmental community in the international or global context.

Third, on the business between summary and indictable offences—and I'll turn to legal counsel in a minute for a distinction—just to address your final point around balance, one of the concerns the committee may wish to think about is this. Suppose we do have a stellar performer, a ship that is 6,000 tonnes, shall we say, and it has been operating in our waters for many years and has been certified as an extremely good environmental performer. If we find a situation in which, by some absolutely unavoidable circumstance, a hundred litres of oil goes over the side for some reason, and if we have a minimum fine at \$500,000 or at any level, what that would do is create a situation in which potentially we would penalize a very solid environmental performer with a response that is really quite severe given the nature of the offence.

Conversely, suppose we set a certain tonnage limit. That also may create the impression that below that, a smaller ship that doesn't have a particularly good environmental record—or any other record for that matter—and dumps over the side is not subject to that minimum fine. It may create the impression that we're not going to treat a big spill from a small operator as seriously as we would otherwise.

I'll just turn to Susan to talk about the distinction between the two offences, just to provide some clarity on that too.

Ms. Susan Waters: Just to repeat your exact question, it was just to look at the distinction between summary and indictable. Was there a part B to it?

• (0950)

Mr. David McGuinty: In practice, given the legislation that we now have and that has been enforced in Canadian waters outside the EEZ, what have these convictions on indictments and summary convictions looked like? What are we talking about? How grievous a spill, for example, are we talking about? How much? How big?

Ms. Susan Waters: I can't answer that exact question. I can tell you why we would proceed under summary versus indictable. Indictable is definitely for the more serious offences. The safeguards afforded to the accused are greater, in that they are entitled to a preliminary hearing before the case is heard and they have the election to proceed by trial by judge or by judge and jury. That's because they are more serious.

For summary, I don't have the statistics to convey how we've proceeded, but we can get them for you.

Mr. Stephen Wendt: In further answer to that, I could attempt to describe a typical offence.

Modern ships that operate heavy machinery in the machinery rooms generally produce oil and the oil tends to go into bilge water. Ships are required to keep oil water separators and to store the oily wastes. Some ships have the capability of incinerating those wastes, but that's not found in most ships. So the requirement is to separate the oil that is always produced in large diesel engines—separate it from water—and you can discharge the relatively clean water under certain limits, but then you have to deal with the oil.

The offences can be based on lack of maintenance of equipment that causes the oil separation devices to not function properly, or they can be caused by intentional discharge of the oil you're supposed to be storing to be put into an appropriate container facility at a port. So the nature of the problem could be in the order of hundreds of litres of oil that are deposited onto the ocean. Those hundreds of litres—100 litres, 200 litres, 300 litres of oil—might by typical production of an engine room crossing the ocean, for example.

The problem, of course, is that this quantity of oil, which might sound small, can kill thousands of birds. So that's the nature of the offence.

Ms. Susan Waters: I wanted to add one more point that might help you. In subsection 13(5), replaced by proposed subsection 13(4.1), those are sentencing considerations, and those are some of the considerations that a prosecutor may go through in deciding whether to proceed by indictment or on summary conviction, looking at the degree of harm caused by the commission of the offence, whether the offence was found to be committed intentionally, recklessly, or inadvertently; whether they were negligent or incompetent, and onward. Those are some of the factors that would be considered.

The Chair: Mr. McGuinty, along that line.

Mr. David McGuinty: The import of a minimum fine of half a million dollars upon conviction of an indictable offence on a very good corporate actor who has a very good record—and this is the best-case scenario—who inadvertently spills 100 litres or 200 litres of engine oil, which can cause damage, is that it would send a pretty powerful message. This is a pretty serious offence, right? A minimum half-a-million dollar fine is serious cash.

Ms. Susan Waters: It would.

One of the concerns we have with minimum fines is that they may appear to be very progressive and send that signal, but in fact when you have a minimum fine of such a high degree, what happens is the discretion you've removed in the sentencing goes further down the chain. These are strict liability offences. The Crown has to prove the action of the offence and it's up to the accused to show they were duly diligent, and the court assesses whether an actor has been duly diligent. Where you have something where the punishment may not appear to meet the crime, where you don't have a huge spill and the court feels the penalty is quite high, they may be reluctant to find that accused is guilty and find they were duly diligent.

Another factor that might happen is that the prosecutor, when deciding whether to continue the charges, has to look at whether there is sufficient evidence to continue, and also at whether it's in the public interest. If a large ship has dumped a small amount—maybe the damage to the environment has not been that great—and they are a good corporate citizen, they may consider those factors and decide it may not be in the public interest to proceed. So in fact by adding

the minimum penalty to the indictable offence, and also to the summary offence, you may be turning off those offences, except for situations where you have the most serious situations, so you may actually be limiting the effectiveness of that offence provision.

• (0955)

The Chair: Mr. McGuinty, are you satisfied?

Mr. Gagnon, and then Mr. Richardson, Mr. Jean, Mr. Cullen, and Mr. Wilfert.

[*Translation*]

Mr. Marcel Gagnon: Thank you, Mr. Chairman.

I don't accept the argument that if the fine is high, then violators will not be charged. Currently, the fines are not excessive and even so, not many charges are being laid. Let me reiterate what I said during a previous meeting. I lived for 44 years along the shores of the St. Lawrence in Trois-Rivières, close enough to the water to see what was going on.

Waste water is supposed to be treated before it can be discharged as clean water into the waterway, but I can tell you that this is not always the case. Far from it, in fact.

We see evidence of these practices along the shoreline. I didn't let my children swim in the river because of the oil and I wasn't the only one. And that was at least ten years ago.

I don't believe in giving people the benefit of the doubt by not imposing a minimum fine. Each time a vessel is involved in a disaster of some sort, all stakeholders and environmentalists, including members of the media, express the view that as long as it is less costly for vessel operators to discharge their waste water directly into the waterway than it is to risk a potential fine, violators will continue to discharge waste into rivers and oceans. Therefore, I think we need to hit violators with hefty fines.

I also think we need to have some faith in the courts. I'm 60 years old and I've always had a clean driving record. If I overindulge this evening and get pulled over for the very first time for driving under the influence, the judge may well give me a suspended sentence. The sanction may be less severe than if I habitually drove while over the legal blood alcohol limit. I think we need to have some faith in the courts.

In terms of fines for environmental offences, the time has come to set minimum fines, before the planet is destroyed. We've reached the point where vessels are, in many cases, causing irreparable harm to the environment.

Birds aren't the only species affected. Coral reefs are dying because of [*Editor's note: inaudible*].

Therefore, it's time to get tough. Everyone who loves life, the planet and the environment will support such action. Today's technology is sufficiently advanced to allow us to respect the environment without destroying commercial enterprise. In my view, the two go hand in hand. Increasingly people are talking about sustainable development and this is one example of this practice.

So then, I'm in favour of imposing a minimum fine and I trust the courts to enforce this provision.

[English]

The Chair: Thank you, Mr. Gagnon.

Mr. Richardson, then Mr. Jean, Mr. Cullen, and Mr. Wilfert.

[Translation]

Mr. Marcel Gagnon: If there are no sanctions to apply, then why adopt legislation in the first place? I'd like someone to answer that question. Apparently, there's nothing to enforce.

[English]

The Chair: Excuse me, Mr. Gagnon. Mr. Richardson has the floor.

Mr. Richardson.

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

I would like to pursue the question with regard to a likelihood of cases or charges being dismissed or withdrawn because of the fine being simply beyond the public interest, just over the top.

Perhaps further to what Mr. McGuinty was questioning—although some of those questions were answered—I'd like to get a perspective on the chain of prosecution here: laying the initial charges, where the discretion comes in, who has that discretion, and at what point we proceed.

I'm concerned with those sections of section 13 that you referenced with regard to sentencing considerations, for example, and whether or not those sentencing considerations might affect ultimate sentencing. The example that was given was that in a small spill it may be more difficult to get a conviction simply because the fine is so high.

• (1000)

Ms. Susan Waters: That's what I was saying. It may be more difficult to get a conviction because the fine is so high. We would prefer for the court to have the discretion to look at the proportionality of the conduct of the offender and the gravity of the offence. The court has to consider those sentencing criteria. That is a mandatory duty. We could have a sentence, for example, that wasn't appropriate, that didn't consider those, and that sentence could be subject to appeal. Sentences are appealed on occasion when they're found not to be suitable, so there still is that option. Again, those are criteria that the court must take into consideration.

Mr. Lee Richardson: Could I go back a step then? At the time of the laying of charges or at the time a vessel was boarded, for example, is there some variance in the charges that may or may not be laid at that time?

Ms. Susan Waters: I'm not sure I understand your question.

Mr. Lee Richardson: What I'm concerned about is an accidental spill, the degree of the spill, what judgment is exercised by an officer, coast guard, game warden, whatever, in laying the initial charges.

Ms. Susan Waters: They do have discretion as to whether or not the charge is appropriate. They follow an enforcement policy and they will look at all the circumstances in the situation and decide whether prosecution is the best avenue. That charge then has to be approved by the Attorney General of Canada. So the prosecutors

have that full discretion. When they decide whether to continue a charge they will look to see whether there is sufficient evidence and whether it's in the public interest. They have guidance when they make that decision.

Mr. Lee Richardson: I'm actually asking two or three questions here. I'm very pleased with the responses. They're very helpful in terms of concerns about excessive prosecution and minor spills, accidental spills, as well as whether or not the very efforts Mr. Mills was trying to exercise here by having a minimum fine are really going to have the reverse effect on what we're trying to achieve. That's been very helpful. Thank you.

The Chair: Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chairman.

Quite frankly, I think we've passed the point of being able to be proportional with the courts and to be able to rely on that. Ten years of experience with criminal law has indicated to me that certainly the courts are looking for guidance from legislators as far as minimum fines and sentences.

I wrestled with the same issue Mr. McGuinty has pointed out today, and that is a big spill versus a small spill, but I think we have to be clear in what we're expecting here. A ship of 500,000 tonnes is not an 18-foot fishing vessel that spills out a couple of metres of oil. It's a vehicle that pushes oil out of its bilge at a rate that would exceed your bathtub probably ten or twenty times. This is not a small oil spill; it's going to have a significant impact. We're talking about less than 1% of vehicles being caught that are discharging this oil.

We have to take severe and drastic measures to ensure the courts are sending a clear message to people in Canadian waters. Unless we do that we're not going to be looking at proportionality; we're going to be looking at a significant impact on all wildlife in Canada, which is, quite frankly, one of our competitive advantages with the rest of the world. I think we have to protect it very earnestly.

I wanted to make those comments. I did wrestle with that, Mr. McGuinty, but I think we're past the point of being able to not send a clear and concise message to people passing through our waters. I think we're past that point.

The Chair: Thank you, Mr. Jean.

Mr. Cullen, and then Mr. Wilfert.

Mr. Nathan Cullen: I'm going to follow up a little on Mr. Jean's comment.

I'm glad to hear within the committee that the intent is there with respect to what it is we're trying to accomplish. I'm having a bit of a hard time imagining the scenario where one of these game wardens is sitting on a beach and is able to spot a 100- to 200-litre oil spill and then seeks prosecution, and we go through the courts and we slap on a \$500,000 fine on a very good corporate citizen. I find that scenario a bit difficult to grasp, but that's not what we're talking about. We're talking about something significant. We're talking about something that we're able to see and find.

I want to get back to your point, Ms. Waters, around the minimum fine and the court potentially throwing something out and finding a way prior to the actual moment of sentencing to say we're going to get rid of this because they are such an excellent corporate citizen and the spill is not meeting the proportionality question, the crime is not meeting the punishment. It seems to me that that answers Mr. McGuinty's concern, in a sense. If you have an excellent corporate citizen, they spill 100 litres, and the judge clearly realizes this is not going to hit, then in a sense they are taken out of the system already. That's not who we're going after. We're not seeking to go after someone who does a good job 99% of the time, spills a few drops, and then we hit them for a half a million dollars. We're going after a different kettle of fish, so to speak.

I'm wondering, just to get your point clear, you mentioned that prior to the point of prosecution, with minimum fines, the problem is the judge might not want to pursue it all the way and say, I'm going to give you a half million dollar fine. Is that not, in a sense, answering or addressing?

I'm not sure who is going to answer this.

• (1005)

Mr. Trevor Swerdfager: We'll both touch on it briefly. I'll make a couple of points to make sure we emphasize them, because I think we've done one poor job of making sure we advise the committee.

Small offenders in this business, so to speak, are extremely important as well. We are, in this bill, not looking to catch only the gross, flagrant, egregious violations of the act and really major polluters. Unfortunately, if you're a bird it doesn't take much oil to cause you a lot of problems. The analogy we gave you I think the last time is if you think of a diver who has a very small hole in their wetsuit; it's the same kind of thing. So small spills are important, and we're after, in this program, a regime that will allow enforcement officers and "the system" to make sure we address both small and large offenders. We need to make sure the system allows that to occur, so we don't want to get ourselves into a situation where if there is somebody who is depositing a small amount of oil, to go back to Mr. Richardson's point...when we get down to the point of laying charges, that's important.

But we also know that operationally in the field, individual enforcement officers can be confronted with a situation where they have an offender who they know has put a small amount of oil in, and regardless of what policy, guidance, direction, orders we give them, we know these are people too. If they're sitting out there knowing that if they lay a charge for a small amount of oil, which is important from an environmental point of view, but will result in a half-a-million-dollar-or-more fine, sometimes enforcement officers themselves, before we even get to the court proceedings, may choose to pull back from the situation in a way that we don't really want to see happen.

The other thing we would emphasize is that, again, while we are concerned about spills that are fairly small, 100 or 200 litres of oil covers a very large amount of sea surface. It's not in a bucket obviously; it spreads out over a large way and can contact a very large number of birds.

Mr. Marcel Gagnon: There is no minimum. Under 5,000 there is no minimum—

The Chair: Please. Members of committee, I want to emphasize that the witnesses and our officials are giving their opinions. Whether they are relevant with respect to the conclusions the committee comes to, it's up to committee to decide.

I would just beg the committee not to get into a cross-examination. I have members down for their questions, and I can tell you, I scrupulously stay with this list.

Mr. Swerdfager, are you finished with respect to that point?

Mr. Trevor Swerdfager: Thank you.

The Chair: Ms. Waters, did you wish to comment? You're fine.

Mr. Cullen, you're finished with respect to your questions and your comments?

Mr. Nathan Cullen: Just to be clear about what I heard, your concern is that with this minimum fine arrangement we're proposing, either small operators or small spills will not be caught by the process because either the warden or the judge will be reluctant to pursue the case. Is that what you're suggesting, that this will hinder the act from achieving its intended purpose by not catching those smaller spills and/or from smaller vessels?

• (1010)

The Chair: Mr. Cullen, I have a point of order, if I may.

Mr. Mills or Mr. Richardson.

Mr. Lee Richardson: I wanted to point out that we're not talking about rowboats here. The minimum vessel in the amendment is 5,000 tonnes. I think there is a significant difference here in the judgment of an officer on shore.

The Chair: That's a point of information with respect to what we're trying to focus on.

Mr. Cullen, keeping that in mind, did you wish to continue your line of questions?

Mr. Nathan Cullen: I've finished my line of questioning; I'm waiting for the answer.

The Chair: Thank you.

Mr. Swerdfager then.

Mr. Trevor Swerdfager: The answer is yes.

The Chair: Thank you.

Then we have Mr. Wilfert, Ms. Ratansi, Mr. Simard, and Mr. Jean.

Hon. Bryon Wilfert: Mr. Chairman, this will be my last intervention on this. I want simply to say that the bill provides, and this is what the courts are looking for...

Our job as legislators, in my opinion, is to provide very clear criteria to assist the courts in their discretion in dealing with sentencing. It matters. We would not be doing our job if we didn't.

Ms. Waters has already pointed out a number of the obvious areas, with the intentional reckless history and those kinds of things. The bill prescribes that.

Also, the issue of major damage is found in the United Nations Convention on the Law of the Sea under section 220.6. If there's sufficient evidence that environmental damage has clearly occurred or there's a threat to the environment, the officer is obviously going to take appropriate action, whether it's in Canadian waters or in the exclusive economic zone. It's important to note that it's both in Canadian waters and in the exclusive economic zone.

I just point out again that I don't want to see the minimum become the ceiling. I want to point out that there's increased pressure on the courts and that the criteria in this legislation provide more than a passing guideline, Mr. Chairman, to the courts to do what we all want, which is the right thing.

The resolve of the government to deal with this and deal with it effectively, and hopefully to address the issues Mr. Gagnon and others have raised, is that we don't want people to pollute. We don't want them to discharge. Whether it's five percent of the industry that's doing it or one percent, or whatever, it's too much; therefore, I'm hoping the legislation, in whatever form this committee deems in the end appropriate, will send a message.

The Chair: Ms. Ratansi, I think we'd like to bring it down on this one and try to get to a vote.

Ms. Ratansi, Mr. Simard, and Mr. Jean.

Ms. Yasmin Ratansi: In order to make a decision, I need some clarification. I understand the concerns: there have been 300,000 birds dying, and that was before this bill came in. This bill is in response to issues that have been arising; we have not had teeth to enforce our legislation. So this bill is really not tested. Is that not correct?

Okay.

Once it is tested, I can understand... I would like to see heavy fines. I am fine with heavy fines. But I'd like to know the risks before I make a decision, and the risks are if I were to go with a minimum fine I would be tying up the judges' hands, per se, and if there were a good corporate citizen who had done his due diligence, the fine would not come into play.

I went through Monsieur Gagnon's example: that if he were caught drinking and driving, the judge would fine him, but if Mr. Gagnon were to kill somebody, the fine would be totally different. In balancing my thoughts, I'm wondering if there is any other clarification within this bill that would help us get over all our concerns. We are all concerned with the planet. I don't think anyone here has any problems with imposing heavy fines, but we would like to know that those fines are basically enforceable. Could you help me out with that? Thanks.

Mr. Trevor Swerdfager: Thank you, Mr. Chairman.

Thanks for that question.

The way I would characterize this discussion is that the committee members are in violent agreement on the objective we're trying to achieve here, which is to put in place a very strong, very clear regime and enforcement provisions. The question is how best to go about it.

Our feeling, based on the analysis that's been done in other countries by justice officials and by environmental agencies, is that

by creating this minimum fine provision there is a high chance we would have a perverse effect and would create the situation in which the bill would not be enforced to the extent we would like it to be. You're quite right in saying we haven't tested that idea. I couldn't say to you we have done this, this, and this, and here are the results, because the act doesn't apply today.

What we are very much striving for is to put in place a regime that allows us to apply the act out to the edge of the economic zone. I would emphasize that the bill very clearly speaks to the notion of the importance of high fines—it doubles them from what we have in place today—and it provides very clear and strong sentencing guidelines. The message is extremely pointed, that fines are important.

I'm reminded that in fact some of the fines are quadrupled, not simply doubled.

If we had the bill in place as it stands now, we have the potential for very high fines; we have an opportunity for courts to assign a very severe penalty against a very severe offence; and as the bill is structured now, the courts also have the opportunity to assign a very minor penalty for a very minor offence.

Our feeling is that if we put in place the minimum fine, the second half of that equation would not be available to courts. They would not be able easily to assign a minor penalty for a minor offence. As a result, some of those minor offenders simply would not be charged or would not move through the full prosecution system.

• (1015)

The Chair: Thank you for that, Mr. Swerdfager.

Now Mr. Simard, and then Mr. Jean.

[*Translation*]

Mr. Christian Simard: These arguments are not very convincing. Even if we quadruple the fines — and we've seen that done under various environmental laws having to do with agricultural pollution and so forth...If we fail to set a minimum fine, then the status quo will prevail, that is a maximum fine of \$125,000. Currently, fines total approximately \$30,000. Even if we were to double the maximum amount, if we fail to get across the idea that the situation is serious enough to warrant a minimum fine, then nothing is going to change. Our efforts won't amount to much.

I don't wish to contradict my colleague, but if a person is charged with driving under the influence, his or her license is automatically suspended. DWI is a criminal offence. In such instances, a minimum fine and minimum sanctions are imposed, at least in Quebec.

We're talking here about vessels of 5,000 tonnes deadweight or over. We're talking about multinationals such as Canada Steamship Lines Inc. which is a very wealthy company. What's a \$100,000 fine when we're dealing with a 5,000 tonne ship? The fine has to mean something to these huge companies that use our waterways and environment. It's almost as if we were afraid to cross these big players and unwilling to protect the smaller players and the environment. So what if this disrupts their regular operations, if ever so slightly. We're adopting environmental legislation and we need to show a modicum of courage.

With all due respect to our witnesses, I find their arguments fallacious. They claim that if the act provides for a minimum fine, no action will be taken and that if the Attorney General advises the game officers that although Canada Steamship Lines Inc. or some other country did pollute the waters, given that it stands to be fined \$100,000, there will be no summary conviction because such action could hurt the company. If a large vessel with considerable assets discharges pollutants, then it is guilty. A clear message must be sent. If vessels pollute the waters in Canada or the coastal waters in Canada and Quebec, operators will be fined because legislation is in place to safeguard the environment. That's the message we wish to convey.

To argue that the Attorney General may not lay charges or that a judge may not convict the violator because the party would be on the hook for a \$100,000 or \$500,000 fine is pure political and legal science fiction. That's not our concern. Our job is to send out a clear message to large companies that use our waterways to refrain from polluting or face the financial consequences of their actions. We're attempting to rectify a *laissez-faire* situation.

When it comes to environmental matters, Canada's international reputation is overblown, in my opinion. Canada isn't really protecting the environment, only imagining that it is because ours is such a large country with many lakes.

• (1020)

[English]

The Chair: Mr. Jean.

Mr. Brian Jean: I'll leave it after this, Mr. Chairman. I've beaten the horse to death.

First, I would like to say that in my opinion, if the environmental officers or the prosecutors are not doing their job, then we should find new ones. But I find it very hard to believe that any environmental officer would not prosecute for this kind of waste in the case of a large ship of 5,000 tonnes.

Secondly, I think what should be taken notice of as well is that the evidence is hard enough to gather and the offence hard enough to prove against these people as it is. We're going to find very few courts convicting on the basis of the evidence even if we're able to find the evidence.

Finally, I think what's very important to understand is that these shipowners, directors, or operators are guilty of something, if not of a criminal act then of negligence. They should have proper instruments and proper equipment in place to ensure this doesn't happen. It's not a situation where they should be let off scot-free. Whether they are a good corporate citizen or not, they are guilty of something. The cleanup that is going to be necessary either today or in a hundred years is going to cost the taxpayers of Canada something. Instead of the taxpayers paying for it, it should be the people who are guilty of it, and in no small measure.

That's what I'd like to say. I just think they are guilty of something through either negligence or intent, and they should be found responsible for it, monetarily or otherwise.

The court does have jurisdiction to impose different sentences. They have the ability to impose jail sentences. For those people who

are guilty purely from intent, which seems to be the case in many situations, they should go to jail, and those people who aren't should be found guilty of negligence and should pay the penalty financially.

The Chair: Thank you.

I just want to remind members, if they would, to address their comments through the chair, please.

We have Mr. Mills.

Mr. Bob Mills: Mr. Chair, this is really a response to Mr. Wilfert on something that came up some time ago.

We're going to use RADARSAT, we're going to use much better ways of finding the evidence, and so on. We're only going to lay those charges when we do have that evidence in place.

You say our job is to put forward the laws, and I believe that. I believe we should do what is right. I think the courts, by imposing such low fines over the last 10 years, have in fact missed the point about how serious this problem is. Other countries have raised their fines dramatically, to millions of dollars, and we have come out with fines of \$5,000 and \$20,000; \$140,000 was our high. By having this minimum fine we're sending the message that this is serious and you're going to pay the price, so go to port, empty your bilge oil, and don't risk that fine.

The Chair: Thank you, Mr. Mills.

Mr. Wilfert.

Hon. Bryon Wilfert: I always have great deference for the chair, by the way.

The Chair: Thank you.

Hon. Bryon Wilfert: I want to respond to Mr. Simard, but first, just this to Mr. Mills. Historically they've been around \$20,000; recently, because of pressure, they're \$140,000.

On the issue of discretion, Mr. Simard used the example of drunk driving. He said he has a stellar driving record—which I'm sure he does—with not even a parking ticket. Beautiful. But under your scenario, with a minimum penalty, what is going to happen is that there'll be no discretion by the courts. Let's assume the minimum penalty is that you're going to get a one-year jail term; then they will not take into account your stellar performance behind the wheel. In other words, the court's hands are tied because the minimum penalty is one year in jail.

Given that perspective, that is why the criteria in the legislation have to be very clear—which I believe they are—in order for the courts to assess the magnitude, whether it's reckless, whether it's deliberate, or whatever it is.

I'm just using that, Mr. Chairman, because I'm sure Mr. Simard doesn't want to go to jail, but obviously under his scenario he would be in jail.

The Chair: Thank you, Mr. Wilfert.

Mr. Paradis.

[*Translation*]

Mr. Denis Paradis (Brome—Missisquoi, Lib.): I'm truly divided. I believe it's important to send out a clear message. By providing for a minimum fine, I'm confident that we are indeed conveying a message. Moreover, I was struck the most by the plea bargaining argument. If a minimum fine is imposed, the Crown attorney will not be able to obtain an admission of guilt without having to endure endless trials. Compiling evidence of guilt will be no easy matter. The offence occurred at sea, witnesses need to be found, and so forth. The whole process will be quite costly. The plea bargaining dimension bothers me the most. If there was some way of saying that violators face a minimum fine of x dollars, but that the possibility of a plea bargain of sorts still exists...However, it's not possible if the minimum fine imposed is too high. We need to have a minimum amount and the stipulation that fines cannot fall below x amount as a result of plea bargaining. In my opinion, plea bargaining is an important concept, without which trials would drag on forever. To avoid having to pay a minimum fine of \$500,000, operators will hire a battery of lawyers and cases will drag on for one, two or three years. This is where I have a problem.

• (1025)

[*English*]

The Chair: Thank you, Mr. Paradis.

Mr. Richardson.

Mr. Lee Richardson: Thank you, Mr. Chairman.

I want to make one final comment.

That was the reason for our concern here, and it has been added to in some of the discussion we've had, that we're not, obviously, working in isolation. These ships pass through Canadian waters. I am concerned that we have incidents of ships purposely dumping in Canada so they arrive clean in United States' jurisdiction because they're afraid of the laws, convictions, and severity of the fines there. It's easier to get away with it here because of the lack of enforcement, but also because the fines are so minimal. That's something we can't allow to continue.

I've been very impressed with the responses we've had, Mr. Chairman. I wanted to say, before we conclude this point, that I'm grateful for the responses we've had from our witnesses.

Thank you.

The Chair: Thank you, Mr. Richardson.

Mr. Cullen.

Mr. Nathan Cullen: I have two small things, Mr. Chair.

One is that I'm also left with the impression from our last set of witnesses, prior to you folks being here—the shipping federations and others—of the sort of presence and attitude that may be in the shipping federation world about these minimum fines.

The other small point is when we do finally have the Minister of Finance in front of us, it will be very good to have clarity. I'm looking over the finance and income tax acts and the business with respect to the deductibility of any of these fines. I would hope the committee at that point would very strongly ensure that whatever

decision we come to today, it will be very clear that this is not in the course of doing business, that these fines will not become tax deductible, and that the Minister of Finance understands that point as well.

That's for a later discussion.

I also thank the witnesses for their testimony today.

The Chair: Thank you.

We'll certainly take that up later.

Now, members of the committee, I think we're ready to take the amendment back into committee. I have Mr. Simard's amendment.

(Amendment agreed to)

(Clause 9 as amended agreed to [See *Minutes of Proceedings*])

• (1030)

The Chair: As we had agreed, Mr. Mills, that would then make your motion redundant.

Mr. Bob Mills: Yes.

The Chair: That's withdrawn. Thank you.

Members of the committee, may I get some direction? We have 52 clauses, and if there are clauses members wish to hold, would it be appropriate for the chair to request that those clauses be brought forward at this time? Then we could move the balance of the clauses with the exception of those clauses. Is the committee in agreement with that approach?

Some hon. members: Agreed.

The Chair: Are there any clauses in the balance of clauses 10 to 52 that members would like to hold?

Seeing none, the chair will entertain a motion to approve the balance of the clauses.

Ms. Yasmin Ratansi: I so move.

(Clauses 10 to 52 inclusive agreed to)

The Chair: Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Members of the committee, seeing nothing else before the chair, I'll receive a motion to adjourn.

An hon. member: I so move.

The Chair: Thank you to our witnesses and those who have attended. Thank you, members of the committee. The meeting is adjourned.

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