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## **Standing Committee on Transport, Infrastructure and Communities**

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**EVIDENCE**

**Thursday, May 29, 2008**

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**Chair**

**Mr. Mervin Tweed**

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## Standing Committee on Transport, Infrastructure and Communities

Thursday, May 29, 2008

•(1150)

[English]

**The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):** Good morning, everyone, and welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 29.

The orders of the day, pursuant to Standing Order 108(2), are for a study of the current status of navigation protection of the Canadian waterways, including the governance and use and operation of the current Navigable Waters Protection Act.

Joining us today by video conference, representing Lake Ontario Waterkeeper, is Krystyn Tully, vice-president.

We apologize for the delay. As you may know, we just came from the House from a vote. Unfortunately sometimes that takes the priority.

We welcome you to our committee in this format. I'm sure you've been given some instruction. You have seven to ten minutes to present, and then there will be questions from the members of the committee.

Please proceed. Welcome.

**Ms. Krystyn Tully (Vice-President, Lake Ontario Waterkeeper):** Thanks.

I believe you all have a copy of the brief that Lake Ontario Waterkeeper submitted. I'll just walk you through our proposals and our comments from that brief. As well, I have had an opportunity to review some of the transcripts from the previous committee hearings, so I can also respond to some of the statements that were made in the past.

Lake Ontario Waterkeeper is a registered Canadian charity. We work on waterways in the Lake Ontario watershed and we also support the growth and development of Waterkeeper programs across the country. We're a grassroots movement, so every Waterkeeper program has a boat. We're out on the water. We take the perspectives of the communities and we in every way possible bring them to the attention of decision-makers. We try to let you know how some of these federal laws and policies affect the communities that are living on waters across Canada.

The Navigable Waters Protection Act, for us, is a really important statute. It recognizes a right of the people to navigate waterways that goes back thousands of years. It's an important part of our legal history. And it reflects and reminds people that every person has a right to access waterways across the country, that the waterways are there for the people.

We are concerned with proposal one, to amend the definition of “navigable waters” to exclude “minor waters”. We would, in our experience, recommend against doing this for two reasons. First, in our opinion and our review, such an amendment isn't necessary. The act only applies to waters that are already navigable. If a waterway is really minor and isn't navigable, then the act wouldn't apply to begin with, so it's not a necessary amendment. Second, dividing Canadian waterways into major and minor waterways creates a two-tiered environmental and common law protection system where some Canadians would have access to certain protections and certain rights that other Canadians wouldn't. In our opinion, this changes and undermines the original intent of the legislation.

In the same way, proposal two, to amend the definition of “work” to explicitly exclude “minor works”, we also see as being unnecessary. The reason is that the Navigable Waters Protection Act only applies to works that interfere substantially with navigation, so there's already a separation of major and minor works in the wording of the act. Changing the definition at this time, again, would just promote a system where some waterways are more protected than other waterways.

In terms of proposal three, for the same reason, the idea of removing the four named works from the act is extremely problematic from the perspective of the grassroots and the communities who are living and working and playing and relying on these rivers and lakes and oceans across the country. In pretty much every case, bridges, booms, dams and causeways interfere, by definition, with navigation. We have seen in Canada incredible waterways, such as the Peticodiac River in Moncton, completely destroyed and completely altered because of the construction of a causeway.

So to eliminate those four named works from the act and not require an environmental assessment before they are constructed can, we know, cause problems. We have seen it cause problems, and we would want to make sure that it doesn't happen again in the future. After the environmental assessment is completed and after the terms and conditions are imposed, it is possible for such works to go ahead and for navigation and fish and fish habitat and other water rights to still be protected.

Then there are the areas where we don't have as much of a comment, for instance, updating the fine range. We agree with this, we understand the logic behind it. We would support that to create both general and specific deterrents. We've recommended that you look at the Fisheries Act, section 78, for guidance on what might be a more up-to-date, modern fine range.

We have no comment on the wreck removal convention. The inspection powers are key to making the environmental assessment process work properly. I believe, as you've heard, under the Environmental Assessment Act, when the terms and conditions are imposed, the Environmental Assessment Act itself doesn't...there's no penalty for violating it. So the two acts, navigable waters and environmental assessment, go hand in hand. Inspection powers certainly help to strengthen that process.

Finally, the five-year review clause seems like a great opportunity for the public to also respond and bring to your attention key issues and key impacts of this legislation on their communities. So we would support and recommend in favour of inserting a five-year review clause.

Generally, I just want to underscore the importance of this act and how it affects our communities, and to talk about the idea of whether the purpose of the act is to protect navigation or to protect navigability.

In our opinion, in our view—we're supported, again, by 2,000 years of legal theory and legal policy and the principle of rights and justice—every person has a right to navigate a waterway. The Navigable Waters Protection Act was created to give certain people, under certain conditions, an opportunity to infringe upon that right. So the purpose of the statute is to protect the public's right to the water, not to protect the right of business or industry or private developers or whoever is interested in impeding navigability.

Again, the purpose of the act is to protect the public interest. For that reason, we were also concerned by a lot of the documentation where Transport Canada refers to their clients as being those who wish to impede navigation, as opposed to the public. We believe that most Canadians believe—certainly from our experience, when we're in the community—that the federal government's job is to protect Canadians and individuals and the public right, first and foremost. That's what most people believe is happening. In the environmental assessment process and the navigable waters permitting process, that's the role they see Transport Canada playing. That's what their expectation is of the government. We just wanted to bring that perspective to you as well.

There's been a lot of talk about environmental assessment. We would in particular like to bring to your attention concerns about the suggestion that this Navigable Waters Protection Act assessment process delays the approvals process. Again, that goes back to the purpose of the act. The purpose of the act is to protect navigation, so the idea that environmental assessment is in some way a delay or an obstacle is really problematic. The community, for the most part, participates in good faith in the assessment process. They're trying to make these projects and proposals better. They're trying to strike a balance between the needs of development or industry and the needs of the community. And to say that the approvals process is an impediment suggests that people are going in assuming that they have a right to a Navigable Waters Protection Act permit, and it's not actually true. We would want to make sure that, when people are applying for licences, they understand the great privilege that is being given to them.

Finally, I would also like to clarify, on the environmental assessment issue, that not every Navigable Waters Protection Act

permit comes with a Fisheries Act permit, and there are two reasons for that. One, as I believe you've been told, it is possible to, for example, build a bridge that doesn't impact fish habitat in any way, so in such a case the Navigable Waters Protection Act would be the only licence, the only opportunity for the public to comment. And in the other case, Fisheries and Oceans has a "no net loss" policy for fish habitat. So if fish habitat is being altered or destroyed to construct a bridge or a causeway or something similar, if the person building the bridge can build other fish habitat or create new fish habitat and there is, technically, no net loss of fish habitat, then in a lot of cases DFO does not require that an environmental assessment be done. So there are many instances, from a community perspective, where the navigable waters is the only licence that creates an opportunity for public comment, consultation, input, and improvement.

Finally, I would like to reiterate the idea that Canadians do expect that we have equal rights to swim, drink, fish, and navigate our waters safely, so the idea of dividing waterways into major or minor waterways and giving some communities more protection and more rights than other communities is extremely concerning. This is particularly important for communities that live in places like Toronto or Oshawa or Kingston, or areas on the Great Lakes or industrial areas where we've already lost a lot of our waterfront areas. Many of our rivers are no longer navigable, but they easily could be with restoration. It would be devastating to a lot of communities to label certain rivers as minor waterways because they are not currently navigable when the community's expectation is that with some investment and some support, those waterways could very easily be navigable again.

As an example, I would cite the Petitediac River, where the federal government, the local government, and the community are doing a lot of work, looking at the causeway that destroyed the river in the 1960s. When it's removed, we will see the restoration of that river. We will see an incredible river come back. We wouldn't want anybody to think that it's a minor waterway just because at this particular moment in time it happens to be in trouble.

● (1155)

We don't want to write off any communities. We don't want to write off any rivers that could, in fact, be great rivers again in the future. There's a real fear among the grassroots that this is what these amendments would do.

Those are the comments I have for now. I would add that commerce is not the only navigational use that benefits communities. We do have a shipping industry in Canada, but also, on the Great Lakes in particular, the recreational boating industry is worth billions of dollars to Ontario.

So we wouldn't want to see the right to navigation limited to one particular sector. It really does have to remain in the hands of all people for the common good.

Thank you.

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

We'll go to Mr. Volpe.

**Hon. Joseph Volpe (Eglinton—Lawrence, Lib.):** We were going to let Mr. Murphy go first.

**The Chair:** I'm sorry. Mr. Murphy, welcome.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Thank you, Mr. Chairman. I thank you for your welcome to the committee. I am a visitor to the committee.

I am very interested in the testimony from Waterkeeper. I come from Moncton, New Brunswick, where the Petitcodiac River is. I am very interested in your comments. Not to make it sound too local, I want to say that the act in question, or the amendments, might have a cascading negative effect on many streams and bodies of water across Canada. That's why I'm asking a question of you with respect to the amendment dealing with the word "minor" waterways.

I don't need to tell the witness, Mr. Chairman, the history of the Petitcodiac River, but by way of explanation, perhaps I'll do so briefly.

The water in the river that remains is barely navigable. It might be considered, below the causeway structure, a minor water system, because it's barely navigable. The point is that it's been choked off by the causeway and has become barely navigable over time because of the actions of governments, and more importantly, because of the inaction of governments. This is really a non-partisan issue, because it has cut both sides, Liberal and Conservative, over the years.

My question is whether you feel as strongly as I do that by stealth, the second point in your commentary, such an amendment regarding the word "minor" might undermine the very purpose of the act. Might it act as a way for the current federal government and successive federal governments to escape their responsibility to participate in restoration initiatives, as is under way in Moncton for the Petitcodiac River?

• (1200)

**Ms. Krystyn Tully:** Yes, that would be a grave concern. One of the reasons I chose the Petitcodiac River as an example is that the federal government did do an environment impact assessment on that river. The findings were that if the causeway were removed, the river would be completely restored, and every species of fish, except one, would return to that river.

We have affidavits and testimony from former commercial fishermen on the river who talk about the environmental benefit it would have, the economic benefit it would have. All these issues really do stem from that one issue of navigation.

The fact that the Petitcodiac River, to look at it today, could be classified as a minor river is a great disservice to the people of Moncton and to other economic opportunities in that area.

**Mr. Brian Murphy:** I don't know if everybody is aware of the work of Robert Kennedy and the Waterkeeper Alliance generally, but the story of the Hudson in the United States, for instance, and their work in North America in general has been quite outstanding.

Could you explain to me how, certainly in Moncton under Daniel LeBlanc, you have moved in various communities from tiny protest groups to an over-weaving group of community interest? In fact, in Moncton, that exact story happened. You might have been a tiny protest group, but now the vast majority—some 72% of the people in the greater Moncton area—want the restoration of the Petitcodiac

River, and they want the federal government to come to the table with the promised funding.

Can you explain that process just briefly? How do you sort of educate people to come to view our water and streams and lakes as fundamental to communities?

**Ms. Krystyn Tully:** By way of illustration, I'll give you the story that Mr. Kennedy tells about the founding of the Hudson Riverkeeper, which was the first public interest Riverkeeper organization on the planet. In the 1960s the Hudson River was completely destroyed. The fish were inedible. The plants were spewing toxins into the river. You can look at old videotapes of cars, garbage, waste, and oil floating down the river. The community was extremely concerned about it.

There's a story about a meeting in an old legion hall, where a bunch of old military army guys got together—the grassroots, the community fishermen—talking about their options for restoring the river. They were really angry because the fishery had been wiped out. The local businesses had been wiped out. They were talking about doing things like setting an oil slick on fire or shoving mattresses up the intake pipes of the industry.

There was an old fisherman, Bob Boyle, who pulled out an ancient statute, called the Rivers and Harbours Act, which said that actually what they were doing was illegal: "They're not allowed to put contaminants into our river. We shouldn't be talking about breaking the law, we should be talking about enforcing the law." At that moment, the concept of the riverkeeper was born. These grassroots organizations spend time on the river. They see for themselves what the issues are. They become the voice of the river and then they use the existing laws, rules, policies, and commitments of government, working with government, wherever possible, to win back those lost rivers and protect rivers from being lost in the future.

That spread; there are now 177 Waterkeeper programs around the world. We're in the United States, Canada, Latin America, India, Russia, Africa, and Australia.

There are nine programs in Canada. The Petitcodiac Riverkeeper was the first. The Lake Ontario Waterkeeper was the second. The only way we can do our job is with important statutes like the Fisheries Act, the Navigable Waters Protection Act, and the Canadian Environmental Assessment Act, all of which are threatened by the proposals that are on the table here today.

If you want to see grassroots groups protecting waterways in Canada, doing it legally, doing it without protests, being able to work with government, we need these kinds of tools and the ability to create public input to get out there to hear what the community has to say, to learn from the wisdom they have, and to make the best possible decisions in the future. If you take away every right that the community has and hand over our waterways to a few private interests, I believe those are decisions that we will truly regret in the future, not just due to the environmental consequences but because of the cultural, social, and economic consequences of making those short-term sacrifices.

• (1205)

**The Chair:** Very good. Thank you.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you very much, Ms. Tully, for joining us today.

I would not want anyone to misunderstand me. At no time was it ever the committee's intention to place responsibility for waterways in the hands of the private sector.

I've listened to your comments and read your brief. One of the problems is that the act has not been amended and the courts have pounced on that. What was deemed to be navigable at the time the legislation was first enacted...Now, this designation applies to all waterways, whether minor, medium or large. The waterway that you are defending will probably always be governed by this act. We are now focusing on the smallest streams and perhaps it is because we want to counter the effects of the courts that we are saying today that it is time to review the very definition of what constitutes a navigable waterway or zone.

Representatives of the Alberta government, who also happened to be representing several other provinces, made a presentation to the committee. This province is prepared to draw up a list of waterways that will remain navigable. We need to understand that if we do not address this matter... As you stated in your submission, Environment Canada maintains certain standards. When the federal government provides funding, an environmental assessment is done, and that satisfies our requirements. The use of the Navigable Waters Protection Act has been challenged in court, which has resulted in the act being applied unevenly. We are not calling into question the Fisheries and Oceans Act. We want it to continue to apply, just like the Canadian Environmental Protection Act.

Even municipalities benefit from certain safeguards and we want that to continue. All we want is for the definition of "navigable" contained in the Navigable Waters Protection Act to be more in line with the aim of the legislation when first enacted, more so than the interpretation of the courts.

I sense that you are concerned, but I hope that we can alleviate your concerns somewhat today. If your waterway is navigable, then there shouldn't be a problem. I'm not familiar with the situation and I see that my colleague Mr. Murphy knows considerably more about this than I do. However, if pleasure craft navigate on your waterway, then there won't be any problem. The waterway will be protected by the act.

[English]

**Ms. Krystyn Tully:** In response, there are a couple of examples. There's the Don River in Toronto. It would be questionable whether or not the Don River is considered a navigable waterway. My hunch would be that most people would consider it a minor waterway. It's navigable once a year when it's flooded for a public event, a paddling event, on the river, but the rest of the year, for the most part, it's not navigable. However, if the conservation authority proceeded with a number of projects over the coming years to remove some small weirs and small causeways, it could again be a navigable river.

So one of the problems with coming up with a concrete list of what is a major waterway and a minor waterway is that for all of these waterways currently threatened, there would be no incentive

and, possibly, very little opportunity to restore those rivers. So that's one concern.

My understanding is that the act only applies when the water is already navigable, so I am a little bit confused about what someone would say is a navigable, but still minor, river. A definite concern that we would have—and we get this from the grassroots—with creating a list at the outset, saying, okay, here's a list of the major waters in a province and here is a list of the minor waters, is that for the most part, private citizens who get involved in environmental issues don't consider themselves environmentalists. They're not reading the *Canada Gazette* every day. They typically find out about these proposals later on in the planning process, and they don't know what tools are available to them to express their concerns or to make a project better. So they're certainly not going to be involved in the policy process at the beginning of the creation of this inventory of major and minor waterways.

It's very difficult to uphold the public right to navigation when you create these concrete lists. It's much better to have the general prohibition on interfering with the public's right to navigate. We do understand that there are tools, such as the class screenings under the Environmental Assessment Act, that can help deal with some of the smaller and more minor projects.

● (1210)

[Translation]

**Mr. Mario Laframboise:** You also need to understand that a bill has not been tabled. It's time to rethink the way in which the courts have defined navigability over the years. We are decision makers and law makers. It's normal for us to request that a bill be examined once it has been tabled to get...

Navigable waterways must be protected. That is my objective. We will take into consideration the definition that you have suggested, bearing in mind the season and other factors. A definition will be proposed. The current interpretation of the courts has resulted in a slew of requests which has added considerably to the department's workload. The time has come to consider some possible definitions and subsequently, to hear from the various stakeholders, to find out if they agree with the proposed definition. However, I do not want people leaving here with the impression that we want to privatize some waterways, or merely prevent that from happening. On the contrary, our objective is to protect navigable waterways.

As members of the Standing Committee on Transport, Infrastructure and Communities, we have a responsibility to question the definition of "navigable". Is that for transportation, tourism or recreational purposes? That is what we intend to do. Based on what has happened, it's conceivable that the courts may have gone too far with their interpretation. It is time to restore some balance and to allow transportation activities. Other laws apply to other activities. Fisheries and Oceans and Environment Canada have applicable legislation. For that reason, we have tried to distance ourselves by maintaining that other laws must be applied.

Now then, it's time to refocus the definition on that which constitutes a navigable waterway. We're asking for your help in examining the impact that the court's interpretation has had, whether rightly or wrongly, over the years. Based on this definition, if one can navigate over a stretch of 100 meters, then the waterway is deemed to be navigable. That was not the aim of the legislation when it was first enacted. As defenders of the transportation sector, we have a responsibility to examine areas that are unclear.

[English]

**Ms. Krystyn Tully:** I see your point. Without having a proposed definition to work from, it is difficult for us. In our recommendations we did suggest that if the transport committee or Transport Canada is very committed to moving forward with these amendments, a more specific wording should be provided to the public for consultation. I don't want to argue in the abstract because we don't know the proposed definition of a navigable water.

Then, also, I wouldn't want to undermine or question the decisions of the court without having had an opportunity to review the jurisprudence. I would assume there was a reason why the judges have ruled the way they have and why the definition has evolved the way it has through case law. I would think the arguments that went into that evolution would be important for the committee to consider as well.

From a community perspective, that's typically how law evolves. The government passes the legislation and then we see what it becomes through court and through policy and through application. So I wouldn't want to take away from the efforts of the courts, because they may have a valid point or valid reasons for having created the definition that they have.

•(1215)

**The Chair:** Thank you.

I think just for a point of understanding, the committee has been asked to study this act and make recommendations back to the government, which would then move the government to bring forward amendments to the act that, again, would become available to the public to have input to and to comment on.

So right now this committee is just studying the act to see if there are amendments we could make to improve the act, and obviously public input is going to be very important to that decision.

**Ms. Krystyn Tully:** So conceptually, just making sure that the broader the definition is to protect future uses...that's what we're hearing from the public is really important.

**The Chair:** Yes, and I'm very certain you'll be back before this committee should we decide to make certain recommendations to the government.

Mr. Masse.

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

Thank you, Ms. Tully, for appearing and adding another layer of information and debate that we haven't had yet through testimony.

We have a Detroit Riverkeeper where I'm from in Windsor, Ontario, and it's been very successful. You're right to describe it as a grassroots organization, but the depth and the value of the legal

expertise is well appreciated as well, as you've seen the advancement of many different communities' projects.

You touched on the definition of minor and major, which I think is important. Many progressive communities across the globe are working in urban environments to restore rivers and tributary systems that were altered. Maybe you can highlight that development, because that's one point you raised that I think is important. The Petitecodiac River is one example, but I think there are other urban examples of projects under way to restore them. They're really an asset not only in terms of the environment but also to the community.

**Ms. Krystyn Tully:** I grew up in Oshawa, Ontario, which is on Lake Ontario just outside of Toronto. It's a fairly industrial city. I grew up in an environment where we assumed that Lake Ontario was supposed to be dirty. We assumed that the Oshawa Creek was not supposed to be something that we would ever go out on in a canoe or take our fishing rods out on.

Through my work at Waterkeeper, what I'm seeing in the community in maybe the last 10 years is that people's expectations are changing for what Canadian waterways should look like. People are starting to think that our waterways really should be clean, that there's technology available, that there's expertise and wisdom available to restore some of what we've lost. So while we have seen a lot of devastation, a loss of fish habitat, a loss of navigability, we are also seeing a renewed hope and a renewed enthusiasm and an understanding of how important these waterways are to the culture and to the businesses in our community.

As an example, the Oshawa River is the reason the city is there. It was a very important natural harbour area. It was a very important navigable water area and over the years, through development, it's dried up so much it's no longer called the Oshawa River, it's now called the Oshawa Creek. Through a simple name change, people have forgotten what that river was supposed to be like.

Through the work of the City of Oshawa, the Oshawa Marina Users Group, and other organizations, we're seeing this idea that Oshawa could be restored and the memory of what it could be is coming back to communities. That's really important. We're seeing that in Toronto as well. We see that in Hamilton. Again, we see it in pretty much every industrial area and urban centre on the Great Lakes. We're seeing it in some of the maritime communities, definitely in Moncton.

So the Navigable Waters Protection Act is not bad, but it's old. It's great that it's old, it's a reminder of what Canada is supposed to be and what rights and privileges and opportunities the public is supposed to have. I think those kinds of works... I could probably go for an hour through every community in the country that has some kind of restoration project going on right now.

**Mr. Brian Masse:** These are exciting times in many respects. There is opportunity to redevelop urban areas that are underutilized and add a quality of living that was never expected or had been long forgotten.

With regard to your comments about the boaters, I'd like you to expand on recreational boating. It's very big on the Great Lakes.

As well, I have a few concerns with the amendment you flagged in terms of minor works. Every year I like to go kayaking. I can tell you that if the docks aren't done properly, that can make a substantial difference in the public usage of the stream you're on, and actually the water flow, because of how they impede passage through the system.

Could you highlight for us how the boating community should be engaged in this?

● (1220)

**Ms. Krystyn Tully:** The boating community is really important. Every area you go to, you have a slightly different community.

For the Ottawa River, there's an Ottawa Riverkeeper program. That's one of the world's greatest rafting rivers. There's a strong boating community there that has very particular interests and very particular concerns. You could compare that to a city like Kingston, where they're not navigating the river so much—it's more about the harbour—but it's a big sailing city. There are Council of Commodores everywhere across the country. It's a community that really does understand what the waterways are like because they're out there every day.

You might think to yourself, well, I'm building a dock, and it's just two feet longer than the dock I used to have. I have to build it because my old dock is rotting. You're up at the cottage and it seems like a small minor project, no big deal. But it can in fact have a huge impact on the current uses for that waterway.

We see that on the Hudson River, which was mentioned. I had the privilege of spending a week there last year, camping and getting to see the river. There are very strict rules about where docks can go and how long they can be. They have had problems on that waterway over the years with small projects that people didn't think were a big deal when they were actually interfering with a fairly substantial right.

**Mr. Brian Masse:** Do I have time, Mr. Chair?

**The Chair:** You have time.

**Mr. Brian Masse:** In your experience as a riverkeeper, can you compare Canadian laws with American laws to reclaim rivers? My understanding is that we have a disadvantage compared with our American friends.

We probably need to be looking at more progressive ways to improve our waterways and tributary systems as opposed to perhaps taking another tool out of the toolbox on that.

**Ms. Krystyn Tully:** The American system is completely different from the Canadian system when it comes to environmental protection. They have the Clean Water Act, which actually encourages citizen involvement. And it encourages big lawsuits, which to Canadians sounds extremely litigious and very confrontational, but for the most part it is a paperwork process similar to what we do with our licensing certificates of approval under provincial laws.

The difference is that there's an expectation built into American environmental law that communities will be involved in the decision-making process. In Canada we tend to be labelled NIMBYs fairly quickly or to be accused of some ulterior or special interest

motivation, when really we're just trying to arrive at the best decisions possible. So citizens are definitely encouraged to participate in the American system much more than they are encouraged to participate in the Canadian system.

That being said, in the Canadian system, the Fisheries Act is a quasi-criminal statute. If you're in violation of the Fisheries Act, you can be prosecuted in the criminal court. Inherent in the Canadian law is the understanding that to infringe upon the public's environmental rights is extremely serious and a threat against the public interest, as opposed to the American system, which is much more based on the tort system and damages and issues between private parties.

**The Chair:** Thank you.

Before I go to Mr. Fast, we had set aside one hour for this discussion, but because of the deferred vote...and I have Mr. Volpe's notice of motion on the agenda for the last part of the meeting. Is it acceptable to committee members to continue with our discussion and give our witness the full time that was allotted? I need to have that on the record, because Mr. Volpe's motion would have been debated now.

Mr. Volpe, do you have any comment on that?

**Hon. Joseph Volpe:** Yes. I appreciate your raising it again. I realize we've made a lot of effort to get Ms. Tully here. I'm anxious to have my motion debated and decided upon. We had agreed that Mr. Jean would provide a response from the government to my motion before we actually debated it. However, I realize that circumstances beyond our control have put us here.

If committee colleagues want to carry on with Ms. Tully, I'm prepared to discuss this on Tuesday.

**The Chair:** Is everybody okay with that?

**Some hon. members:** Agreed.

**The Chair:** We will discuss Mr. Volpe's motion on Tuesday then.

Sorry, Ms. Tully, but we have a procedure to follow.

Mr. Fast, please.

**Mr. Ed Fast (Abbotsford, CPC):** Thank you, Mr. Chair.

Thank you, Ms. Tully, for appearing via teleconference.

I'd like to know a little more about your organization. How many paid-up members do you have?

● (1225)

**Ms. Krystyn Tully:** Lake Ontario Waterkeeper is a registered Canadian charity. We're based in Toronto. Our membership program is not a paid membership program in the way that you would think of an organization. We represent thousands of individuals and grass-roots organizations on Lake Ontario. We also work with other Canadian waterkeepers. Our president, Mark Mattson, also sits on the board of directors for Waterkeeper Alliance representing the Canadian waterkeeper programs. He's also the president of Fraser Riverkeeper, which is a newer organization with members in the Vancouver area. We represent thousands of people in the Lake Ontario watershed and we work with these nine programs across the country.

**Mr. Ed Fast:** You represent thousands of people, but how? Do they fill out a membership form or are they simply on a mailing list?

**Ms. Krystyn Tully:** We do have paid members. We have people who do give us \$30 or \$50 annually. We host fundraising events that hundreds of people attend.

**Mr. Ed Fast:** How do you know you have thousands of members? Is it because these are people who have signed membership forms or simply people who receive your mailers?

**Ms. Krystyn Tully:** These are people who would call themselves members of Lake Ontario Waterkeeper either because they have paid us a \$30 annual membership fee or because they work with our staff on a regular basis. We don't do the kind of cold-call direct mail that you may be implying. We would never call a stranger a member.

**Mr. Ed Fast:** What's the key purpose? What's the mission statement for your organization? I'm trying to drill down to what you do. Is it environmental or is to protect navigable waterways?

**Ms. Krystyn Tully:** Our mandate is to restore and protect Lake Ontario and the Great Lakes watershed. We work on a legal approach so we are involved with federal and provincial laws, commenting on certificates of approval and teaching law students. We've mentored about 100 law students in the last six years, educating them about how environmental laws work should they choose to pursue that career.

**Mr. Ed Fast:** The focus is the environment and the quality of the watersheds that you consider in your work. Is that correct?

**Ms. Krystyn Tully:** That's correct.

**Mr. Ed Fast:** Your purpose is not to address the infrastructure needs of Canada. Is that correct?

**Ms. Krystyn Tully:** I think it depends on how you define infrastructure. We've seen how important these waterways are. They are fundamentally the natural infrastructure for Canadian communities. You cannot win back waterways across Canada if you don't make sure that environmental laws are respected.

**Mr. Ed Fast:** Are you suggesting that waterways are infrastructure?

**Ms. Krystyn Tully:** They're the foundation of the community. Are you talking about man-made infrastructure or are you talking about the wealth and assets our communities are built on?

**Mr. Ed Fast:** I just want to make sure we understand what your purposes are.

By the way, I don't want to be adversarial. I just want to understand the focus of your work. I'm assuming it's the protection of the environment and the protection of the quality of the water in waterways within your jurisdiction. Is that correct?

**Ms. Krystyn Tully:** That's correct.

If you're trying to figure out the connection between the environmental mandate of the organization and the Navigable Waters Protection Act, those two really do go hand in hand going back 2,000 years, as I tried to articulate but maybe not well enough. The reason we're protecting these waterways is not just for the sake of the waterways themselves, it's that our communities need these to be strong, and that's why we're here today.

**Mr. Ed Fast:** That brings me to the key question, and that has to do with whether the Navigable Waters Protection Act has as a purpose the protection of the environment. I believe most of us here at this committee have made the assumption from reading the act that the purpose is to protect navigation and, yes, as you said, public access to our waterways. It is not the purpose of this act to protect the environment, but there are triggers within the act right now for environmental assessments.

Numerous witnesses have already appeared before us, and we've received numerous submissions. Virtually all of them have taken issue with the antiquity of this act, how antiquated it is, and how incapable it is of meeting the needs of Canada today, because of an inability to get infrastructure in place, because of all these obstacles the act places in the way of getting this work done.

Do you see this act as being an environmental act as well as a navigability act, or is it, as you initially stated, to protect the public's right of access to these waterways as opposed to focusing primarily on the environmental aspects of our waterways?

• (1230)

**Ms. Krystyn Tully:** First, I don't think I've explicitly said that I think the Navigable Waters Protection Act is an environmental statute. I think it's exactly what it says it is. It's there to protect navigability and navigation and the public's right to navigate.

That said, it triggers the environmental assessment process for a reason. Any time we talk about the public's right to access water, there is an environmental consequence. I hope I've helped in talking about some of that here today.

In particular, I would like to make the point that you can't really separate the environmental impacts from these other things. I'm a little concerned that perhaps you're trying to separate environmental issues from navigation issues. We're not here for any ulterior motive whatsoever. We're here to give you a perspective from the grassroots, to tell you how important this legislation is to individuals and how important this decision-making process has been.

**Mr. Ed Fast:** I just want to assure you that's not the case, to separate the two; what we're trying to do is restore some balance. As Mr. Laframboise mentioned, the balance between those various aspects—the environment, navigability, infrastructure—has been lost. We don't want to go back 2,000 years. We don't want to deal with an act that's even 100 years old. We want a modern act that addresses today's needs.

There are complaints from communities across this country. There's unanimity from the municipalities, the FCM, provinces, territories, and cities across this country that the current act is a huge hindrance to our ability to build much-needed infrastructure.

You're suggesting we simply back off from restoring that balance and that the primary focus should still be navigability and the environment. We're not saying that those aren't important; we're simply saying we've lost that balance. The timeliness of getting this work in place has been lost for many, many years.

**Ms. Krystyn Tully:** I can't speak to the administrative burden that I know you have been briefed on, that some people in the transport department, for example, may be experiencing. I would say that I would be extremely hesitant to suggest that such things as the Magna Carta, old as they may be, are not relevant or important. That is one of the bases for what is considered appropriate and respectful of public rights in Canada. Navigation has always been part of that.

The purpose of the act, as I said before, is to protect individuals and citizens and their right to navigate; it is not to protect the interests of those individuals who wish to infringe upon that right. That's the balance the committee may be looking to strike.

**The Chair:** Thank you.

Mr. Volpe.

**Hon. Joseph Volpe:** Thank you very much, Mr. Chairman.

Thank you, Ms. Tully. Let me tell you right off the bat, I find your responses quite refreshing. You've given us a different perspective on the picture. I like the fact that you're able to answer every question without having to refer to notes. I try not to refer to any myself—however, I must.

Ms. Tully, we've been looking at navigable waters protection program applications. Quite some time ago we had representatives from, obviously, the various jurisdictions to give us an indication of the total number of applications in process and the ones that get accepted. I'd like to read off a couple of things for you, if you don't mind.

For example, in 2006, out of the 2,741 applications received and 2,038 carried over, only 46 were rejected. The following year, out of a combined total of 4,432, only 153 were rejected. The reason I give you those two figures—the others are all similar for the previous eight years—is that members of the committee wanted to know what was so pressing that we had to look at some of these considerations. The issue was that the delays were not substance oriented, they were process oriented. So the same thing kept coming up over and over again. Some of the recommendations you see as amendments are ones that, were they to have received approval by Parliament, would facilitate a process that still results in this kind of—i.e., the figures I gave you—acceptance rate.

The second thing I'd like to bring to your attention for reflection is that we've had before us members from the Department of the Environment, Fisheries and Oceans, representatives from the various provinces. You heard one of my colleagues talk about the deputation made by the Province of Alberta in conjunction with other provinces. They came before the committee after having consulted environmental interests, environmental groups, etc., and they came forward with a representation you have critiqued.

Are we missing a disconnect that we should be looking at? Our impression was that we would be looking at facilitating issues of local infrastructure needs rather than issues that were going to be of a larger dimension that are not treated by the act, not envisaged by the act, and don't exclude the intervention of DFO or the environment departments and the provinces and the federal government. What are we missing?

• (1235)

**Ms. Krystyn Tully:** I'll answer your second question first.

To my knowledge, none of the Waterkeeper programs has ever been consulted on this, and certainly none of the volunteer organizations that I spoke to in the Lake Ontario watershed has been consulted on this. We were up on the Abitibi River earlier this week taking a trip down the river, recreating a traditional native voyage, and they certainly also were not aware of any of these issues. It's possible that in terms of a disconnect in the earlier consultation process, the grassroots groups or enough organizations weren't captured or weren't consulted. Maybe that's why this perspective is new or newer to the committee.

I would also say that—

**Hon. Joseph Volpe:** While you're thinking for a second, it struck me that, because you use the example of Toronto and I too am from Toronto, there's been a proliferation of marinas all along the waterfront, as well as additional fill-in in the Toronto harbour area—all of Front Street and south is all fill-in—all of this would have an enormous impact on the navigable waterway systems and on the quality of the water and the environment. But the amendments to this act don't really envisage doing anything about that. I think it would probably be pretentious to do that anyway, but that's a personal aside.

How do we match up the macro-movement of whatever other activities—whether it's boating pleasure or whether it's industry business and societal needs—with something like this, the navigable waters? I don't mean to simplify it, but essentially it's projected as something that says we need to have a farmer in field A be able to put in a bridge or to make some other adjustments that may be needed at his place, or a small community needs to do some things, that really have nothing to do with the waterfront in Toronto where it seems as if the wild west—no offence to anybody—is the order of the day.

**Ms. Krystyn Tully:** Tools are available under the Environmental Assessment Act—the screening report, as I mentioned—so you don't have to do every environmental assessment from scratch. For anything that falls into the class screening, you could have class screenings for small bridges, those kinds of things.

The second point is that in terms of delaying the process, the environmental assessment process itself is not that lengthy on paper. Not every project has to be sent out for public consultation. It's a discretionary decision under the act whether or not to invite the public to participate. Second, when public participation is involved in a screening level environmental assessment, the mandatory period of time to review the documents is only 30 days. Technically, then, under the environmental assessment process, at most you could be looking at a 30-day delay. So I'm not exactly sure if I understand why the EA would be such a deterrent.

In terms of the difference between the number of applications and the number of approvals, it would be interesting to see how often the environmental assessment process actually improved the original proposal. For the most part when we participate in EAs, we're not trying to use the process to stop a project from going forward. We're trying to make sure that whatever somebody wants to do is fine as long as it doesn't infringe on any of the public rights and what terms and conditions should be attached to that proposal to make sure that swimmability, drinkability, fishability, navigation, and these other issues are addressed.

•(1240)

**Hon. Joseph Volpe:** I appreciate that, Ms. Tully, but I for one on this committee have been wrestling with the various departments whose interest must be triggered before any applications are brought forward. That's why I gave you the numbers about the ones that are carried forward from year to year: 2,000-plus are dealt with every year, and an additional 2,000 plus are not. That tells me the delay is much more than 30 days.

The reason we have these figures is that the committee demanded from the department a collection of all the delays or any of the applications that were being held up and the rationale for them being held up, so we could deal with a problem that was real rather than one that was perceived.

At least four departments federally must be engaged whenever there is a serious question, and none of them is necessarily triggered by the other one. They can be triggered independently, and their respective provincial departments do the same. I think Monsieur Laframboise gave you an indication earlier on about the frustration at provincial levels about how all of the departments that are activist—so activist departments—in the maintenance of the environment are all engaged in the process. Unless I've read them all wrong, they have asked this committee to come up with a mechanism for not necessarily discarding issues so we can move forward, but to see if we can collect all the precedents that come forward that are constantly repeated one after the other, so from an administrative perspective we could both safeguard environmental issues, or, to use the most egregious one, the Petitcodiac River causeway and all the others that really don't fit into that category.

I don't know whether I'm making myself clear, Ms. Tully. I'm asking whether the philosophy and ideology of social development and economic development that may have prevailed or been non-existent 30, 40, 50, or 60 years ago and as prevalent today can go hand in hand with the immediate needs that others have come forward and identified from the institutionalized grassroots philosophical positions you've outlined.

Were you ever consulted by them?

**Ms. Krystyn Tully:** No. We found out about this from the letter from your chair. We do read the *Canada Gazette*, but no government department has ever reached out to us to consult on this issue.

I don't doubt that there may be an administrative problem with the way this act is being administered. I would suggest the solution is not in changing the legislation. The legislation itself is okay. The problems are not inherent in the wording. The problems may be in the way it's being interpreted or the way the programs are being administered within the government, but for every suggestion that

has been put forward, actual amendment of the legislation is unnecessary to deal with the problem.

So I don't doubt for a second that the problems or the concerns that you've raised are legitimate. I'm just saying that I don't believe, and it doesn't appear to be the case, that changing the legislation is the only available solution.

**The Chair:** Thank you.

We'll go to Mr. Carrier.

[*Translation*]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Thank you, Mr. Chairman.

Good day, Ms. Tully.

I want to come back to the distinction that needs to be made between the environment and the navigability of waterways. I'd like to hear what you think about my interpretation. In my opinion, whether or not a waterway is navigable is an environmental consideration. It comes down to a question of our natural environment. To navigate a waterway is to take advantage of our environment. Protecting our navigable waters is also a matter of protecting our environment.

How do you feel about my proposed definition?

[*English*]

**Ms. Krystyn Tully:** I think that's fair. For the most part, we don't find that our communities are divided between environmentalists and non-environmentalists. We find that, for the most part, everybody cares about where they live. Whether they consider themselves environmentalists or not, clean water and access to water in their community are vital to the success and the health of that community.

Navigability is one indicator of whether a public or a community is still controlling and still accessing its water body and whether its relationship with that waterway is healthy.

•(1245)

[*Translation*]

**Mr. Robert Carrier:** Thank you.

In the list of recommendations at the end of your submission, you refer to proposals 1 to 3. You recommend that the government engage in public consultations, including outreach to non-profit organizations and the academic community. In your opinion, is the current level of consultation inadequate? You have read what previous witnesses have said. Do you believe that there is a need for broader consultation? Are you recommending that consultations be held across the country, rather than just here in Ottawa?

[*English*]

**Ms. Krystyn Tully:** Yes, that's definitely what we would recommend. As I've said, the issues of navigation and navigability change dramatically from community to community. So I would never, from Lake Ontario, want to recommend or suggest that I represent a maritime community on an ocean waterfront where the issues—with tides, estuaries, that kind of thing—would be very different.

Also, with due respect, the committee process, for the most part, is difficult for individuals to participate in. There's not a lot of notice about when the committee hearings are going to be. There's not a lot of opportunity to get written submissions in. For individuals who are not necessarily professional environmentalists or professionals working for the navigation transportation industry, this isn't always the best forum for them to bring their concerns to government. Also, I think the academic community, in this particular case, because we are dealing with a legal issue and a philosophical issue in some respects, could make a valid contribution talking about why this right is so important to people and what can be done to protect it.

We are a charity. We are an education group. We're a group that's of assistance to the public. We're not a lobby organization. So I'm not here today to try to tell government what it should be doing or shouldn't be doing or to exert any power or any influence. We wouldn't come and say that you can't make these changes. But we would strongly recommend that there be a national consultation if the committee or the government is interested in pursuing changes to those first three proposals. We think you would learn a lot, that the community has a lot to say, and that there may, in fact, be more concerns on the ground than the government is aware of at this time.

[Translation]

**Mr. Robert Carrier:** Thank you.

I wanted to ask a question about proposal 3 which calls for the removal of the four named works from the Act, namely bridges, booms, dams and causeways. These are major works to be sure. In Quebec, when any major work is involved, the Bureau d'audiences publiques sur l'environnement initiates an environmental assessment. In that respect, this afford us some measure of protection.

Have you looked at the situation in each province? Do you feel that the legislation in Ontario provides adequate protection, or do you believe that the federal legislation is key?

[English]

**Ms. Krystyn Tully:** In Ontario the federal legislation is key. For the most part the provincial environmental assessment requirements only apply to provincial undertakings. A private proponent, a corporation, for example, that wished to build a bridge or put in a causeway, might not necessarily trigger the provincial environmental assessment process, so the community here relies very heavily on the federal statute.

I know the environmental assessment requirements vary from province to province, so the people of Quebec are quite lucky that they already have that protection in place. But having this national standard ensures that every community across the country enjoys those same opportunities.

**The Chair:** Thank you, Monsieur Carrier.

Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair, and thank you to our witness for appearing here.

We've heard from municipalities on the study we're doing. We've heard from provinces and territories. Though we may not have heard the testimony at the committee, many of us have heard from the farming community. In our own communities we've heard from

neighbourhood groups looking to build pathways and increase the livability of their communities. We've heard from a broad range of people, and now we have your testimony today.

The overwhelming weight of the testimony is that the act needs to be changed, it needs to be modernized. You may be sensing some of the committee's skepticism about your testimony today. That's because the overwhelming weight of what we're hearing is that the act itself doesn't function properly; that the act should function to protect navigation; that it's not necessarily an environmental piece of legislation; and that we may have other environmental protections, both within federal legislation and at different levels of government, that would cover off those particular issues. Your testimony today is taking a much different perspective.

I'm reading the brief that was submitted to the committee—your executive summary and comments—and if I'm understanding your brief correctly, you essentially want to leave the act the way it is, except for making the enforcement provisions stronger and tougher. Am I understanding your brief correctly?

• (1250)

**Ms. Krystyn Tully:** Yes. We were responding to the seven proposed changes. We went through each of the changes and gave you our comment on each one. That's with the exception of the wreck removal convention. We had no comment on that issue.

Essentially this is what we did: we looked at the proposals, we looked at the projects we're involved in, we spoke with some of the communities we work with and tried to understand how the changes could affect them, and then we gave you our analysis and our commentary for each of the seven changes that came from the transport department, I believe.

**Mr. Jeff Watson:** That was a long, meandering answer. Do I understand that Lake Ontario Waterkeeper essentially believes the act as it currently exists functions well except on the enforcement and the inspection side? Is that correct?

**Ms. Krystyn Tully:** I think we would suggest that we have no major concerns with the act in its current form; that, in response to the seven proposals presented by the transport department, this is our commentary; and that the first three proposals could have impacts on the community.

**Mr. Jeff Watson:** Let me take this a step further, then. If the act, as you say, functions well, and the thrust of the changes is to adopt some of the punishment provisions of the Fisheries Act and to beef up inspection powers, you want to make this a more environmental piece of legislation and move it further away from the issue of navigation. Is that correct?

**Ms. Krystyn Tully:** No, I wouldn't say that's correct at all. First and foremost, the Navigable Waters Protection Act is there to recognize the right of every citizen to navigate and to access our public waterways.

We looked at the seven proposed changes. If the department believes the current range of fines needs to be increased, then we've offered an example of a piece of legislation that was recently amended, or modernized to use your term, such as the Fisheries Act. That's not something that's a priority or a campaign of our organization; that was our response to the proposal in our efforts to be helpful to the committee.

**Mr. Jeff Watson:** Are there any other changes you'd want to make to the act? We're looking to modernize the act—

**Ms. Krystyn Tully:** I'm sorry, I missed the first part.

**Mr. Jeff Watson:** I'm asking whether there are any changes that you would propose. Your brief responds to the seven recommendations of Transport Canada. I don't necessarily see that what your brief proposes will modernize the act, only in the narrow cases of inspection and enforcement.

Are there any other ideas you have to modernize the act, beyond just responding to the seven recommendations? How would you foresee modernizing it? Or do you want to leave this the way it is essentially?

**Ms. Krystyn Tully:** I think it's fair to say that we wouldn't have an opinion one way or the other on the Navigable Waters Protection Act, except for the fact that the committee itself is reviewing it, and we had some expertise and some information to offer to the committee at this time. We are not, as an organization, seeking to change the Navigable Waters Protection Act or its purpose.

• (1255)

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

I have only one person left on my list, and that's you, Mr. Jean. Because of the time, you have only a couple of minutes.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Thank you very much, Mr. Chair.

Thanks, Ms. Tully, for coming today. It's always refreshing to hear your testimony.

As an avid whitewater canoeist in northern Alberta, I can tell you that when I received some of these letters from some citizens of Canada worried about navigation, I was worried as well, so I went back and took another look. I want to reassure those people who are listening today that in no way at all is the Canadian government considering reducing navigation rights through changes to the Navigable Waters Protection Act. We are not at all looking at doing that.

This is not what the Canadian government is doing. I don't know if you're aware of what we're doing, but let's take aerodromes as an example. That's an airport on water. Anybody can build one. There's nobody stopping anybody from building one in Canada. That's because planes didn't exist 100 years ago, when this act was made. We need to do something to make sure local municipalities and local governments can have some authority to deal with issues like this for safety reasons, and navigation of water, of course, is one of those.

You commented in relation to contamination and pollution. They have nothing to do with this act. This act is about navigation. Clearly we do not want to have happen here what's happened in the Hudson River or in other rivers in the U.S. This is not what we're doing. That's why we want to look at this act to make sure we make positive changes.

I want to get back to what Mr. Fast asked. I looked at your website, and it talks about licensed members of Waterkeeper Alliance. How many licensed members do you have in Canada?

**Ms. Krystyn Tully:** Waterkeeper Alliance is based in the United States, but there are nine licensed members of Waterkeeper Alliance in Canada. Does that make sense?

**Mr. Brian Jean:** Okay, that's what I was wondering. I understand.

Now, I have a very short period of time, but I do notice that your group is about safe drinking water for Canadians. Do you have a position on our national water strategy? We are the first government to ever come forward with one in Canada. What is your position on that?

**Ms. Krystyn Tully:** I personally haven't taken a look at that legislation in detail. That's not the research I've been doing. We were consulted, and our president, Mark Mattson, is part of the Canadian Water Issues Council; they've been heavily involved in source water protection—keeping water in its basin—and the development of the model act that's come out of the Munk Centre at the University of Toronto.

In terms of safe drinking water, as the other members have indicated, we are an environmental organization, so we look at the protection that goes into the source water. Certainly we know from experience and from learning from our other Riverkeeper brother and sister organizations in the U.S. that New York City has some of the greatest and cleanest urban drinking water on the planet because they protected water at its source. I think every environmental organization and every citizen would be supportive of legislation that truly protects clean drinking water for every community.

**Mr. Brian Jean:** So as far as the national water strategy... obviously it goes along with your organization's mantra but as well with the aboriginal strategy, reducing the at-risk aboriginal communities by more than half in the last two years. Has your association taken any position on that? Obviously these are amazing positions to take for a government. It's the first time in Canada's history, and we're getting the job done on water.

**Ms. Krystyn Tully:** Typically we don't take positions on legislation. We wouldn't, generally, unless it's a particular area of expertise that we would want to bring to the attention of the public. And I certainly wouldn't want to say that I speak for the first nations community.

**The Chair:** With that, Ms. Tully, I thank you for your patience with our committee today in terms of the interruptions. I do appreciate your comments. I can assure you that if this committee makes recommendations to the government, it will go out for public consumption and public comment.

Thank you very much.

**Ms. Krystyn Tully:** Thank you very much.

**The Chair:** For the information of the committee, on Tuesday, June 3, three of the four guests that we've invited are confirmed: Transport Canada, Infrastructure Canada, and the Environmental Assessment Agency.

I would also remind members that in order to help us prepare the documents that we're going to forward to the department, members should get them in by Monday, if possible. I would appreciate that. We'll get them translated, and then we can make comment afterwards.

Other than that, the meeting is adjourned.

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