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Chair

Mr. James Bezan

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● (0905)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): I call this meeting to order.

I apologize for getting off to a little bit of a late start. We are going to continue on with our study on Bill C-16. We have as witnesses today, for the first hour and a half, Kevin Buerfeind, Gerry Brunet, and Albin Tremblay from the Department of the Environment. They're accompanied by Sarah Cosgrove, who has been at committee already. From Parks Canada we have Darlene Upton, director of the law enforcement branch. From the Department of Justice we have Linda Tingley. From Public Prosecution Service of Canada we have Chantal Proulx, acting deputy director, and Erin Eacott.

Welcome. Please keep your opening comments brief, because we do have a lot of witnesses. We're going to do five-minute rounds just so we can get as many questions in as possible for our members.

Monsieur Tremblay, s'il vous plaît.

[*Translation*]

Mr. Albin Tremblay (Chief Enforcement Officer, Department of the Environment): I'm pleased to be here this morning to make a brief presentation to you on the Enforcement Branch. My goal is to enable you to familiarize yourselves a little with the mandate and objectives of the Enforcement Branch and with the main tools at our disposal to carry out our mandate.

In slide 2, I'll briefly say a few words to explain to you the two main components of compliance and enforcement, to assist you in understanding the roles and responsibilities of each. The entire field of enforcement is divided into two main components.

The first is compliance promotion, the purpose of which is to inform businesses of the existence of acts and regulations and their requirements to ensure they understand their obligations. That responsibility is mainly borne by our programs within Environment Canada, which develops acts and regulations. The second is enforcement. This is where the Enforcement Branch comes in, the purpose of which is to enforce acts such as those that are developed and implemented by our organization.

With respect to slide 3, I'm going to give you a bit of a general explanation of how enforcement is implemented. Once a violation is identified, the objective is to return the alleged violators to compliance in the shortest time possible and, through the measures we take, to have a deterrent effect as a result of which violators will not consider repeating the same violations. So these are two main components: quickly returning to compliance and ensuring that violations are not repeated in future.

In slide 4, we provide a map of Canada showing where our various offices are located across the country. We thought that might be useful for the committee in clearly understanding how our offices are distributed. I'd like to pay special attention to the fact that, with the new resources allocated to us, mainly under Budget 2007, we were able to open six new offices in the country. These are the green points on the colour map. We have a new office in Cranbrook, British Columbia, four new offices in the Ontario region, in Thunder Bay, Sault Ste Marie, Sarnia and North Bay, and a new office in the Quebec Region, in Harrington Harbour on the Lower North Shore. These six offices are in addition to the existing Environment Canada offices across the country.

In the next slide, on page 5, a table shows how our employees are distributed across Canada. You see the various regions making up our organization. The number of employees is shown for the two main programs, the environment and wildlife. All the figures in the table are actual and correct. I draw your attention to the fact that there are errors in some of the totals, in particular for the Ontario and Quebec regions. However, the individual elements in the table are precise and accurate. So there is a total of 315 enforcement officers across the country, one-third for wildlife and two-thirds for the environment.

In slide 6, I'll add a few words to briefly present the three main activities through which the Enforcement Branch carries out its mandate. First of all, inspections are an important tool enabling us to verify compliance with the various acts and regulations. I would particularly like to draw your attention to the fact that inspections are conducted every year under a national plan developed in cooperation with our colleagues in the programs and certain partners, including other federal departments and organizations and the provinces, to determine the most important sectors or areas where we should focus our inspections in order to make optimum use of the resources at our disposal.

● (0910)

The second activity is investigations, which often result from the findings of our inspections and information received from the public on situations brought to our attention or information exercises conducted within our organization.

The third activity, which is becoming increasingly important in our organization, is intelligence-gathering. We have experts who analyze and cross-reference various types of information to determine which areas of activity are likely to have areas of non-compliance and thus to channel our resources to the most significant non-compliant sectors across the country.

I would also like to draw your attention to the fact that, since 2004, the enforcement sector at Environment Canada has been integrated into a single organization, which is the Enforcement Branch, under the responsibility of a chief enforcement officer, who reports directly to the deputy minister.

The purpose of this exercise was to create an organization with a very clear line structure making it possible to take uniform, effective decisions across the country and to draw a distinction between effective enforcement and the promotion of compliance and pollution prevention, which is carried out through our department's various programs.

I'm going to add some information concerning slide 7. Last week, I told you about the policies made available to our enforcement officers to enable them to make their decisions within a well-defined framework. One of the important principles in our work is to enforce the laws in a fair, predictable and consistent manner across Canada. To do this, policies are fundamentally important. We currently have three policies in place and a fourth in development. I won't go into the details, but the last one concerns the Species at Risk Act.

These policies are central to our officers' approach and work instruments. They are used in their training and ensure that the act is enforced in a well-defined framework across the country.

Slide 8 shows some core principles guiding our officers' work. The first principle is that compliance with the acts and regulations is mandatory. No act is excepted. All acts must be complied with. The second principle, which is extremely important, is that our enforcement officers must enforce the acts in a fair, predictable and consistent manner. Third, the accent is clearly on the protection of biodiversity, prevention of damage to the environment and risks to health. These are the most important factors guiding our officers' decisions.

All alleged offences will be reviewed by our officers for the purpose of taking coherent measures in accordance with the relevant policies. Lastly, we encourage the public to inform us of any suspected violation. We are committed to taking action and following up on those statements.

On page 9, we explain how our officers' work is done with regard to investigations and inspections. As I mentioned last week, it is our enforcement officers who determine, based on available evidence, whether there are grounds to initiate an enforcement action, whatever it might be. That decision is up to them. Then, our officers have a range of tools, depending on the situation, to take the most appropriate measures commensurate with the nature of the violation or other criteria that must be considered, which I talked to you about earlier.

● (0915)

Lastly, for the purpose of selecting the most appropriate enforcement measure, three very important criteria are set out in the policies I referred to a little earlier. They are the nature of the violation, which concerns the severity of the harm done, the violator's intent or attempts to conceal information and the effectiveness of the measure. A little earlier, I talked about quickly returning to compliance, avoiding a repetition of the violation, and uniformity, that is to say to ensure that we take similar measures for the same violation across the country, regardless of the location or sector.

I'll briefly present the last two slides. Let's look at the table on page 10, which gives you an idea of the various tools available to our officers. They range from the warning letter to the laying of charges. I don't intend to provide a lot of details, but I will mention that a range of tools are available. One of the benefits of the new bill is that it makes it so these tools are much more standardized for all the acts and regulations that we use, which is not currently the case. Some tools are not available under certain acts. That will be corrected by the new bill.

With regard to the last slide, I can tell you that, with the number of officers at our disposal across the country, we have to work in very close cooperation with various partners, other federal agencies, provincial agencies and even internationally. Organizations cooperate with us on various files.

Thank you.

The Chair: Thank you very much.

[*English*]

Madam Tingley, was there anything you needed to add to the presentation?

Mrs. Linda Tingley (Senior Counsel, Department of Justice): No, thank you.

The Chair: Ms. Upton.

Ms. Darlene Upton (Director, Law Enforcement Branch, Parks Canada Agency): No, thank you.

The Chair: So moving right along, we'll go to the Public Prosecution Service of Canada. Madame Proulx, please.

Mrs. Chantal Proulx (Acting Deputy Director of Public Prosecutions, Regulatory and Economic Prosecutions Branch, Public Prosecution Service of Canada): Thank you, Mr. Chair and honourable members. On behalf of the PPSC, I am pleased to have this opportunity to address this committee in its continuing examination of Bill C-16, the Environmental Enforcement Act.

Joining me is Erin Eacott, a front-line prosecutor with our Edmonton regional office. Ms. Eacott has considerable experience prosecuting offences under some of the statutes that would be amended by Bill C-16.

With your permission, I'd like to make a brief opening statement to frame our discussion. Since the PPSC is a new organization, I propose to provide you with a bit of background on its creation, its mandate, the services it currently provides in relation to environmental investigations and prosecutions, and how we expect Bill C-16 to impact upon current PPSC operations.

[*Translation*]

The PPSC was created on December 12, 2006 with the coming into force of the Director of Public Prosecutions Act, which forms Part 3 of the Federal Accountability Act.

The PPSC replaced the division of the Department of Justice that previously conducted federal prosecutions. The deputy head of the PPSC reports directly to the Attorney General of Canada and is known as the Director of Public Prosecutions, or DPP.

Our enabling legislation, the Director of Public Prosecutions Act, outlines the powers, duties and responsibilities of the PPSC. Its mandate is simple—to prosecute criminal offences within the jurisdiction of the Attorney General of Canada on behalf of the federal Crown in a manner that is independent of any improper influence and respects the public interest.

In addition, the act mandates us to provide advice to law enforcement agencies such as Environment Canada and Parks Canada Agency in respect of investigations that may lead to prosecutions.

Providing legal advice during a criminal investigation ensures that investigative techniques and procedures are consistent with the evolving rules of evidence and Charter protections.

[*English*]

Our role as legal adviser to investigative agencies is distinct from the investigative roles they perform. The PPSC is not an investigative agency and our prosecutors are not investigators. Although prosecutors provide advice during the course of an investigation, prosecutors do not initiate, direct, or supervise investigations. They do not gather evidence; that is the role of Environment Canada and Parks Canada agency enforcement officers.

● (0920)

Prosecutors and enforcement officers exercise separate and independent roles in Canada. Enforcement officers decide whether to commence an investigation, who to investigate, how to investigate, and whether to lay charges at the end of an investigation. This separation between investigative and prosecutorial authority is well entrenched in Canadian law.

Once charges are laid by the enforcement officer, the prosecutor must decide whether to proceed with the prosecution. The test we use is as follows. The prosecutor examines the evidence to see whether there is a reasonable prospect of conviction. If there is, then he or she decides whether, in light of the provable facts and the whole of the surrounding circumstances, the public interest requires the prosecution to be pursued. If the prosecutor is not satisfied that the prosecution should proceed, he or she can put an end to it by withdrawing or staying the charges.

In exercising prosecutorial discretion, our prosecutors are guided by a desk book. This document, called *The Federal Prosecution Service Deskbook*, is available publicly through the PPSC's website.

In four jurisdictions in Canada, namely Quebec, Alberta, British Columbia, and New Brunswick, there is a practice of pre-charge approval in environmental matters. In those jurisdictions, prosecutors exercise their discretion to prosecute once the investigation is completed but before the charges are laid. We apply the same test in pre-charge jurisdictions as we apply in post-charge jurisdictions, except that we must be satisfied the test is met before the police or the investigative agency lays the charges.

[*Translation*]

I turn now to address the operational impact of Bill C-16 on the PPSC.

Many of the statutes proposed to be amended will include mandatory minimum fines that must be imposed upon a conviction. In addition to mandatory minimum fines, the increase in the maximum penalties, doubling of fines for repeat offenders, mandatory additional fines for economic advantage gained, cumulative and per day fines, purpose clauses, sentencing principles and aggravating factors, are strong signals to the courts that these offences are very serious.

Greater penalties, improved powers to fashion creative remedies in sentencing, and the ability to revoke operating licences, will, we believe, add complexity and lengthen sentencing proceedings. There may also be constitutional challenges to this legislation.

[*English*]

In summary, we anticipate more trials, increased complexity of proceedings, and many more investigations due to the increased number and efforts of the enforcement officers. In terms of implementing Bill C-16, our prosecutors will continue to advise enforcement officers during their investigations and will inform the court on the intent of Parliament in passing the Environmental Enforcement Act. Our prosecutors will advocate firmly but fairly for principled sentences based on the law and the evidence before the court.

Thank you for the opportunity to address the committee. I would be pleased to answer any questions you may have.

The Chair: Thank you.

We're going to go with five-minute rounds, so we can get as many questions in as possible.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you very much.

Ms. Proulx, I have one quick question about the PPSC. Could you tell us again why it was created and what sort of glaring need it filled? We were prosecuting before this agency was created. You may have mentioned it at the beginning of your presentation, but could you explain a little further why it was created? Was it under the Accountability Act?

● (0925)

Mrs. Chantal Proulx: It was. Thank you for your question.

The Director of Public Prosecutions Act was part 3 of the Federal Accountability Act, which came into force on December 12, 2006. The Minister of Justice, the Honourable Vic Toewsat the time, testified before Parliament that the intent of the legislation was to make clear the independence of federal prosecutions from any undue or improper influence.

Mr. Francis Scarpaleggia: Was this a problem before?

Mrs. Chantal Proulx: There wasn't any case of improper influence that had been identified, no. It was to make sure that prosecutions were manifestly and wholly independent, through the creation of mechanisms whereby, should the Attorney General wish to direct the DPP to act in any particular fashion, he has to do so in writing. That direction is published in the *Canada Gazette*.

Mr. Francis Scarpaleggia: Thank you. You will recall that in the last decade or so we've cleaned up the effluent from pulp and paper mills. I don't believe pulp and paper mills are polluting anymore. Is that the case? Have there been infractions under the pulp and paper effluent regulations recently? Is everything fine in that sector?

[*Translation*]

Mr. Albin Tremblay: From memory, I know that there are indeed federal pulp and paper regulations. Since the early 1990s, we've done a lot of work in that sector. Now the compliance rate in the pulp and paper sector is very high.

Mr. Francis Scarpaleggia: Is it 100% or more like 95%?

Mr. Albin Tremblay: I don't think it's 100%, but it's a very high level.

Mr. Francis Scarpaleggia: Are your inspectors informed of violations from time to time? Do you know whether any complaints were filed over the past two or three years concerning effluent from pulp and paper mills?

Mr. Albin Tremblay: I can ask my colleague Kevin to answer that question.

Mr. Francis Scarpaleggia: Of course, go ahead.

Mr. Albin Tremblay: As he comes from the Atlantic region, he's very well versed in the environmental field.

Mr. Francis Scarpaleggia: Does the Atlantic region include Quebec?

Mr. Albin Tremblay: No.

Mr. Francis Scarpaleggia: In fact, the majority or a large number of pulp and paper mills are located in Quebec. I'd like it to be an inspector from Quebec who covers the Quebec region. That's why I asked the question. Is there another inspector here at the table who covers Quebec?

Mr. Albin Tremblay: No. Mr. Buerfeind covers the Atlantic region, Mr. Brunet Ontario.

I know the Quebec region well, since I've worked there for about 20 years.

Mr. Francis Scarpaleggia: All right. That was sort of the purpose of my question.

Go ahead, we're talking about the Atlantic.

Mr. Albin Tremblay: I'd like to point out that Quebec is a special case. An administrative agreement is in place with the province, as a result of which there has been a single window for the entire pulp and paper sector since 1994.

Mr. Francis Scarpaleggia: So that falls to the provincial inspectors from Quebec?

Mr. Albin Tremblay: No, it's a single window. Instead of submitting two different sets of information, the business provides the information once and it's made accessible to both governments. Each of the governments retains its own responsibility for enforcing the act.

Mr. Francis Scarpaleggia: It's somewhat like in the case of the oil sands and retention ponds. They seem to say that, in Alberta, it's the province that gathers the data, which is provided by the business.

Is this the same kind of system?

Mr. Albin Tremblay: I would say it's different. As you mentioned, in Quebec, businesses provide the same set of information simultaneously to the two enforcement systems, that is to say the federal and provincial systems. We receive the same information as the Quebec government. We have an agreement with the Quebec government, which conducts control inspections every year. Inspectors go to each of the mills to check the validity of the information provided to us.

Mr. Francis Scarpaleggia: They go to the mills. However, if I correctly understood the evidence we recently received as part of our oil sands study, it appears that the inspectors, both those from the province of Alberta and those from the federal government, do not really go to the oil sands development sites.

Isn't this a double standard?

● (0930)

Mr. Albin Tremblay: No, I wouldn't say that's the case. The ways of doing things vary with the specific nature of the agreements, the regulations that are implemented across the country.

The Chair: Thank you very much.

Mr. Bigras, you have five minutes.

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you very much, Mr. Chairman.

Thanks to all the witnesses for appearing here this morning.

Ms. Proulx, I would have liked to have a written document. That helps us formulate our questions. Perhaps you could send it to us in the next few days.

I believe you said that one consequence of the bill would be the implementation of minimum penalties. Is that correct?

Mrs. Chantal Proulx: That's correct.

Mr. Bernard Bigras: Do you think that, in the case of violations, the act contains loopholes with regard to the imposition of minimum penalties?

Mrs. Chantal Proulx: The minimum penalties are provided for certain violations that are considered to be most serious. Some provisions of the act enable certain individuals to ask a court not to impose the penalty.

I'll hand over to Ms. Eacott, who will provide you with details on that subject.

[*English*]

Mrs. Erin Eacott (Counsel, Edmonton Regional Office, Public Prosecution Service of Canada): As Ms. Proulx stated, there are not mandatory minimum fines for all of the offences within the bill, just the more serious ones. There's also a clause that the court can use—I'll call it the undue hardship clause—if they wish to go below the minimum fine because they feel it would be undue hardship to the particular accused. They may do so and provide reasons for going below that minimum.

[*Translation*]

Mr. Bernard Bigras: I'm not a lawyer, but I've taken the trouble to reread the act. It's precisely on this subject that I'd like to know the opinion of Justice Canada and, among others, that of the Public Prosecution Service.

The new section 50.6 provides as follows:

> 50.6 The court may impose a fine that is less than a minimum amount provided for in section 50 or 50.3, as the case may be, if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those sections.

Does that mean that, under the act, these minimum fines that are being increased, but that will nevertheless be very small, could be avoided by the offender? A loophole in the act in fact enables the offender to do so where he can show that the fine, even if it is very small, would cause him undue financial hardship. Isn't section 50.6 a weak link, a loophole for polluters?

Mrs. Chantal Proulx: In the circumstances, I would prefer to turn to my colleagues from the Department of Justice. They will explain to you the underlying reason for that.

Mr. Albin Tremblay: Ms. Cosgrove.

[*English*]

Ms. Sarah Cosgrove (Manager, Legislative Advice Section, Department of the Environment): The rationale behind including that provision was to ensure that there wouldn't be undue hardship in the allocation of fines. There are certainly situations. Our fine structure specifies different categories—individuals, small corporations, and then others. In each of those categories there's a wide range of individuals or corporations that could be charged. In the situation of quite a small business, it's traditional for the judiciary to consider many factors and ensure that they're not putting a sentence in place that would cause undue hardship. This provision itself states quite clearly that undue hardship would have to be proven, and that's quite a hurdle. In addition, the judge would have to provide reasons for that in the event that clause is relied on.

[*Translation*]

Mr. Bernard Bigras: There are small offenders, but the lamentable incidents associated with Irving come to mind, perhaps because this is the anniversary. I'd like to know how Justice Canada defines what constitutes undue financial hardship for an offender.

[*English*]

Ms. Sarah Cosgrove: My understanding is that there is case law, and the judiciary would make that determination, but the language chosen in the provision was meant to ensure that the loophole—the hurdle—was not an easy one to meet and only would be met in the case of true excessive or undue hardship.

● (0935)

[*Translation*]

Mr. Bernard Bigras: I understand, but I would like to know what undue financial hardship is in Justice Canada's view. Those terms weren't used by chance. Where do they come from? What is their rationale? What is undue hardship for Mr. Ouellet may not be for Bernard Bigras or Mr. Trudeau. What is undue financial hardship? Are financial statements examined?

[*English*]

Ms. Linda Tingley: I would think that a court would have to take that kind of evidence into consideration, but there is some discretion in the courts in determining what would be undue hardship for the particular accused in front of them at the time.

As Ms. Cosgrove pointed out, the courts are required by this provision to provide reasons, so they must have something they can actually explain on paper as to why they felt this particular accused would suffer undue hardship if the minimum penalty were imposed.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, I see we're very far from having mandatory minimum fines, in view of section 50.6.

[*English*]

The Chair: *Merci beaucoup*.

We'll continue with our questioning. I'll go to Madam Duncan for five minutes.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair.

I want to thank the chair and the clerk for bringing forward the witnesses I requested. We have the full complement of Canadian enforcement, and I'm very happy.

Welcome to our committee. Congratulations on the great job you do.

I want to follow up a bit on the questions by my colleague from the Bloc. I'm a little bit puzzled about all of the additions in here and then the obvious throwing in of the exception to make up for the fact that there's minimum sentencing.

I'm not sure if the Department of Justice would speak to that, or Monsieur Tremblay, or if it would be Madame Proulx, but I'm a little bit puzzled about the need to add the minimum sentencing when clearly there are numerous outs, including the provisions that my colleague on the committee has raised.

My additional question on this would possibly go to the prosecution office and to the head of investigations or whoever would be bringing charges. I'm wondering if the addition of the minimum sentencing might have any negative implications for the bringing of charges, particularly where it's a continuing offence that may be going on for many months or for several years and could result in many millions of dollars in even the minimum penalty. I'm wondering if you think that will have any implications for the willingness of the department to be bringing the charges or for a prosecution to go forward.

[*Translation*]

Mr. Albin Tremblay: I understood that there were two questions.

[*English*]

For the first one, I would again ask Sarah to try to explain those opting-out kinds of options.

Ms. Sarah Cosgrove: Sure. The minimum fines were felt to provide helpful guideposts to the courts for what could constitute an appropriate starting point for determining a fine. It's intended to achieve deterrence and denunciation. Currently, the court-imposed fines, as we expressed previously, are often not high enough to achieve these objectives. Adding the minimum will help ensure that the fines are appropriate.

There is only that one exception provided in the bill. This was felt to be important to ensure that a proportional sentence is achieved in cases where the judiciary feels the minimums would cause undue hardship.

Ms. Linda Duncan: But given the fact that the judge has complete discretion in proposed section 273, what's the point of the minimum sentencing?

Ms. Sarah Cosgrove: Again, the minimum sentences would apply in the vast majority of cases. There would have to be present those exceptional situations where the penalty would cause undue hardship in order to—

Ms. Linda Duncan: But we can't presume that, can we? We don't know how the judge will exercise his discretion.

Ms. Sarah Cosgrove: While the judiciary, I understand, has discretion, the judiciary certainly is bound by what would be set out in a statute if Bill C-16 passes.

● (0940)

Ms. Linda Duncan: Ms. Cosgrove, I agree, except that proposed section 273 gives the judges complete discretion to override the minimum, does it not?

Ms. Sarah Cosgrove: If the test can be met, the judge can override, but again, there is a specific test there and reasons must be provided by the judge—

Ms. Linda Duncan: So it's necessary to add that in. Is that not generally understood in the cases? Was it felt necessary to require the court to consider that factor? Is that why it was added in?

Ms. Sarah Cosgrove: It was in order to ensure in exceptional circumstances that the sentence would be proportional. If there were minimums, again, in not the majority of situations, it would result in an unproportional sentence.

Ms. Linda Duncan: I'm left confused.

Mrs. Chantal Proulx: I may be able to help a bit.

I think I would add that the term "undue hardship" would be defined by the courts over time through jurisprudence. Certainly the words themselves, their plain meaning, one would think would denote an exceptional circumstance and not a run-of-the-mill case. The test of undueness is by definition something that's outside of the ordinary. The requirement to provide reasons is one that I think is helpful as well, because it will allow the prosecutors to review the judge's reasons with a view to determining if the crown feels the judge has committed an error and to raising the issue with an appellate court.

Ms. Linda Duncan: Ms. Proulx, can you explain this to me? I'm just trying to make sense of all these provisions, and I'm sure the court and the prosecutors are doing this when they get to court. We have the exception in proposed section 273, but the government, in its wisdom, in the bill under proposed section 272.3, has already differentiated between big corporations and small revenue corporations. So isn't there a multiplicity of factors here complicating...? Isn't the court already directed to treat a small revenue corporation in a lesser way anyway, with a lesser penalty?

Mrs. Chantal Proulx: I'm going to ask Ms. Eacott if she wants to deal with that question.

Mrs. Erin Eacott: The bill does provide different minimums and maximums. One is for individuals, one is for small revenue corporations under $5 million, and the other is a catch-all for everyone else. So there is already some consideration in the bill for ensuring, for instance, for a smaller company or an individual, that the minimums you're exposed to are lower .

The Chair: The time has expired.

Mr. Woodworth, I believe you're kicking off.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Yes, thank you very much, and maybe I'll just pursue the very last issue that was being discussed for continuity.

[*Translation*]

Thank you for being here with us this morning.

[*English*]

Would it be equally accurate to say, in fact, that the differential fines are not necessarily looking in the telescope through one end and allowing lower fines for individuals and small corporations, but are actually allowing higher fines for larger corporations? Would that be an accurate way of looking at it also?

Mrs. Erin Eacott: Yes, I would definitely say that would be an accurate way of looking at it.

Mr. Stephen Woodworth: Otherwise, in fact, if you had to impose a fine that was uniform for all persons, your minimums might have to be quite low to consider the case of an individual, for example, as distinct from a large multinational corporation. Correct?

Mrs. Erin Eacott: That's correct.

Mr. Stephen Woodworth: So what we're really doing is allowing the opportunity for larger fines by differentiating. Correct?

Mrs. Erin Eacott: I don't know the exact reason, but from a prosecutor's perspective, that's what would result.

Mr. Stephen Woodworth: I've practised law for almost 30 years, both prosecuting and defence, and every time I've seen a provision for a minimum fine, I have seen a provision for an exemption due to undue hardship, just based on the Canadian legal principle that we don't want to grind people into the dust. I don't know if you have ever seen a minimum fine provision that did not contain a potential exemption for undue hardship.

Mrs. Chantal Proulx: I can answer that in reference, I think, to the Excise Act. It contains a number of mandatory minimum penalties in relation to tobacco smuggling. Those penalties were subject to constitutional challenge on the basis that they constituted cruel and unusual punishment. In a case where a court does find the punishment to be cruel and unusual in the absence of an undue hardship provision, a court would likely carve out a constitutional exemption.

● (0945)

Mr. Stephen Woodworth: That's about what I would have expected.

Also, when this undue hardship principle is applied, am I correct that judges simply can't go with their heart, as it were, but have to apply judicial principles and they have to stick with the necessity of finding an actual hardship? They can't just draw something out of thin air.

Mrs. Chantal Proulx: Again, as I said, the expression will be defined through common law over time, but on its plain meaning, the words “undue hardship” certainly denote something out of the ordinary.

Mr. Stephen Woodworth: Am I right that we would try to say that if a judge did do something that didn't adhere to judicial principles, the prosecution would at least be allowed, if not inclined, to appeal the decision that misapplied that provision? Is that correct?

Mrs. Chantal Proulx: It would certainly have weight.

Mr. Stephen Woodworth: Thank you.

[*Translation*]

I also have some questions for Mr. Tremblay.

[*English*]

You have a number of other partners—international, federal, and provincial. It is unclear to me whether the personnel of other agencies have the opportunity to enforce our federal laws. Can you assist me with that?

[*Translation*]

Mr. Albin Tremblay: It's possible that officers from other agencies, Fisheries and Oceans in particular, and our own officers may also be designated as fisheries officers, but that's done to a limited degree.

[*English*]

Maybe I can ask Gerry or Kevin, on each of their sides, about when those situations happen.

Mr. Gerry Brunet (Assistant Director, Wildlife, Ontario Region, Department of the Environment): Sure.

I'm with the wildlife enforcement side in the province of Ontario, so certainly what I see is that Ontario provincial EOs are cross-appointed to do the Migratory Birds Convention Act. Likewise, we are cross-appointed to enforce Ontario's Fish and Wildlife Conservation Act. That is a common denominator across the country in most provincial and territorial jurisdictions under the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act. There are certain provincial and territorial departments that are cross-appointed to conduct investigations. Mostly they deal with interprovincial types of violations under WAPPRIITA.

Mr. Stephen Woodworth: Generally, there are more boots on the ground than simply the 315 that answer directly to our enforcement officer.

[*Translation*]

Mr. Albin Tremblay: That's one way of looking at it, indeed.

[*English*]

Mr. Stephen Woodworth: *Merci.*

Do the provincial officers and others have any opportunity to train in or be informed of the federal policies regarding enforcement? How does that work?

Mr. Gerry Brunet: Again, on the wildlife side, I didn't mention that Canada Border Services Agency is another key partner under WAPPRIITA, and we have entered into MOUs with their investigative side and have trained their investigators under WAPPRIITA. Yes, our inspectors or our officers will go out with CBSA inspectors and train them on the things to look for concerning endangered species coming into the country. Likewise, provincial and territorial agencies are trained in migratory bird enforcement and things of that nature.

Mr. Stephen Woodworth: Thank you.

The Chair: We'll go to Mr. Trudeau.

Mr. Justin Trudeau (Papineau, Lib.): Thank you.

We're talking about this undue hardship concern. I will continue with this in a little bit.

If one looks exactly at the fines, for an individual the minimum fine on a summary conviction is $5,000, but only for the most serious offences. For all other types of offences there is no minimum fine. I understand the importance of establishing parameters to help judges with their sentencing, both the minimum and the maximum, but $5,000 for a most serious offence toward an individual.... I think there is a desire by the government to demonstrate with this bill that we, as a country, are going to be tough on environmental crime. With the example Mr. Woodworth brought up, the fact that there has been and is a mechanism for calling for cruel and unusual punishment if indeed there is something of an extraordinary nature.... Why temper a minimum that seems reasonable for something that as a most serious environmental offence is $5,000? Why is there even a need to temper that?

● (0950)

Ms. Sarah Cosgrove: I should start by pointing out that the minimum penalties in the bill are part of a larger scheme. The bill proposes the minimums and maximums. It is important to point out that the bill adds a purpose clause to each of the statutes. It describes the purpose of sentencing, and in addition, the bill, as a principle of sentencing, points to these aggravating factors. The judge must consider aggravating factors, including the list provided in the bill, when completing a sentence.

The judiciary and our prosecutors can explain this in greater detail better than I can, but the judiciary, traditionally under common law, takes into account a number of factors in determining a sentence. The minimums exist. The entire scheme will be considered by a judge when considering a sentence. The submissions of our prosecutors will be considered as well. It is important that there be an out in the rare situation of undue hardship, when the minimum wouldn't actually reflect an appropriate fine for a particular offender, given undue hardship.

Mr. Justin Trudeau: But we have an out already, within the "cruel and unusual" constitutional challenge, when it's really pushed.

The other issue I have is that much was made of the fact that it is up to the agent to determine when there is an infraction and then to apply the law.

How does the effect of the PPSC coming in to decide whether it's carried forward, based on whether we can get a conviction or not, temper the impact of an agent seeing infringement of the law and wanting to apply a fine or call it before the courts, and then being told that a conviction can't be gotten on that? How does this reduce the effectiveness of the environmental enforcement law?

Mrs. Chantal Proulx: The test that the PPSC applies when it decides whether or not to go forward with a prosecution has been the same test for quite some time, so in fact it's not new. The test is applied in the majority of provinces, after charges are laid, to ensure that the continuation of a prosecution—because the charge has already been laid—is reasonable both in terms of the evidence and in terms of the public interest. This is not new.

Erin can provide details about the pre-charge provinces, but the officers, should they decide to exercise their discretion in favour of a prosecution, will contact the crown and request authorization to lay a charge. Erin can provide details on that.

Mr. Justin Trudeau: So in fact the inspectors do not have the ability to simply apply the law in these pre-charge provinces, which include Quebec, Ontario—you know, the provinces with the larger populations—

Mrs. Chantal Proulx: And New Brunswick, B.C., and Alberta.

Mr. Justin Trudeau: Okay. So the big provinces actually do not get to choose when to apply the law. They have to check with prosecutors to see whether they think they can get a conviction. Is that right?

Mrs. Erin Eacott: If I may, I'll answer that question.

We work in cooperation with the investigators during their investigations to answer any questions they have. Once their investigation is complete, they will send us a brief of all of their evidence, which we will review. They'll provide us a recommendation. Sometimes the recommendation will be that they feel it should proceed to prosecution; sometimes it will be that they're not sure and could we please clarify for them; or that they don't think so, but maybe we will. We review all of that evidence and then we, as the PPSC, make a determination whether, based on the test, which you've heard, the charge should proceed. We then let the investigators know, and then they go ahead and lay the charge.

Mr. Justin Trudeau: If it doesn't proceed, can it be settled? Is it black and white, or can you create a settlement or recommend that we try to—

Mrs. Erin Eacott: It's more black and white.

Mrs. Chantal Proulx: Let me add that at the end of the day, in the pre-charge and the post-charge provinces the result will be the same, because the same brief will come to the crown in the post-charge provinces and the same evaluation will be made.

The Chair: Mr. Braid, please.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you to all of our witnesses for appearing this morning, and for your great presentations.

I'll start with a similar conversation thread to Mr. Trudeau's, with respect to the PPSC.

In these scenarios where the enforcement officer makes the charge, and then your office comes in and the prosecutor determines whether or not there are merits with the case and it proceeds or not, in what percentage of cases is it determined by the prosecuting official that it not proceed, and what factors are taken into consideration?

● (0955)

Mrs. Chantal Proulx: I'll speak generally in terms of all our prosecutions, because we prosecute all federal offences. I'll ask Erin to comment specifically on environmental prosecutions.

Chapter 15 of our deskbook is titled "The Decision to Prosecute". It sets out two criteria, first as to whether there's a reasonable prospect of conviction. Under that heading, the prosecutor reviews the evidence, looks at each of the constituent elements of an offence —what acts have to have been committed, and what the level of intent has to be—looks at what evidence is available and admissible under each of those headings, and determines whether there is sufficient evidence that there is a reasonable prospect. It's not certainty, but it's more than 50%, if you like; it's a reasonable prospect.

Having done that, the prosecutor then turns to determining whether it's in the public interest for the prosecution to go forward and, under that heading, considers a number of factors that one would expect would inform the public interest—the nature of the offence, the age of the offence, the circumstances of the offender, all the circumstances of the offence—and determines whether the case should go forward.

Of the cases that are referred to us for prosecution, I wouldn't feel comfortable giving you a percentage or a number, because these things are exercises of discretion that take place in the front lines every day. Certainly we in Ottawa aren't made aware of each of the cases that a prosecutor comes to look at on a daily basis, but I would say that most cases brought to us are approved for prosecution.

Erin, please....

Mrs. Erin Eacott: I would add to that—and it doesn't matter whether PPSC is looking at a crown brief pre-charge or after charges—that if there's a gap in the evidence and we feel it needs to be covered in order for there to be a successful prosecution, we go back to the investigators. We say that we see a problem, and we ask them to fill this gap so that we can ensure we have a reasonable prospect of conviction. It's not sort of a close-a-door-in-their-face. There's a lot of back and forth if we see that there are gaps for them to correct those problems so that the files can go ahead.

Mr. Peter Braid: Great.

In the provinces where you're involved in the pre-charge process, what is unique about those jurisdictions that creates this different process?

Mrs. Chantal Proulx: This is something that has evolved over time through agreements with enforcement agencies and through best practices. In some jurisdictions there is a formal arrangement, in the ones that I've mentioned, whereby there is pre-charge screening. Certainly in the province of Quebec it has been a very long-standing practice. In other jurisdictions that doesn't necessarily mean the crowns don't see the files until after the charges are laid.

Certainly there is a lot of cooperation between our prosecution service and the various enforcement agencies, including Environment Canada, Parks Canada, etc., and police services across the country. So there is that continuing contact. Oftentimes, by the time the file is actually brought to us, post-charge, the crown has in fact been involved in the case for many months. Whether or not there's a formal arrangement in place, we certainly try to get involved in potential prosecutions before charges are laid because it's a best practice. It ensures that evidence is collected in conformity with the rules of evidence and in compliance with the charter.

Mr. Peter Braid: I'm curious, then, with respect to these four jurisdictions. In your mind, is that a more efficient process? And are there differences with the success rate?

Mrs. Chantal Proulx: I think that maximizing cooperation between prosecution services and investigative agencies at both the federal and provincial levels certainly should be encouraged, and it ensures, when cases come to court, not only that the evidence that has been marshalled is often better in terms of its quality and its quantity, but also better timing of the court process.

Cooperation throughout the investigation ensures, for instance, that once charges are laid we're ready to go forward with disclosure, that there aren't any delays in the court process, and that we're ready to go and proceed to trial as quickly as possible. We try to do that in all of the jurisdictions. It's a best practice, if you ask me, in terms of success rates. As prosecution services, our job is to present the evidence to the court in a firm and fair fashion for the court to make a determination. That is the definition for us of a successful prosecution, that all of the relevant evidence was brought to the court in a timely and effective fashion.

● (1000)

The Chair: Thank you very much.

Monsieur Ouellet, s'il vous plaît.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Thank you, Mr. Chairman.

Thank you for coming to inform us in such large numbers.

My question is for Mr. Tremblay. Clearly you're not the ones who drafted the bill, but it is your services that will enforce it. Earlier you said that the bill would reduce repeat offences. Can you tell us how? Let's take a concrete example. As drafted, this bill will prevent the deaths of 500 birds in the oil sands.

Mr. Albin Tremblay: Thank you for your question.

First, I don't remember saying that the bill would increase or reduce repeat offences, but I can nevertheless answer your question.

Last week, Ms. Wright said that analyses and studies had shown that higher fines are a greater deterrent. As you mentioned, our work will be to enforce the laws and regulations resulting from these changes in a fair, equitable and uniform manner. For my part, I believe that higher fines will make alleged offenders think more and will prevent them from committing the same offences under the regulations.

Mr. Christian Ouellet: Earlier I questioned the people who drafted and are introducing this bill. How is it possible that this bill strengthens enforcement while making it possible to reduce minimum fines? Do you think enforcement will be simplified?

Mr. Albin Tremblay: By making it possible to reduce the minimum fines?

Mr. Christian Ouellet: Yes, because there are minimum fines. But it's also possible for those fines to be reduced. Will that make your job simpler or will there be fewer prosecutions?

Mr. Albin Tremblay: That doesn't change the nature of our work, which is to establish the facts, assess the situation, conduct investigations and inspections and recommend the most appropriate measures for correcting the situation or preventing repeat offences.

Mr. Christian Ouellet: If that doesn't assist in enforcement, could it then be removed from the bill?

Mr. Albin Tremblay: As enforcement officers, we are preparing the file. In any case, the fines at issue here come into play where it is impossible to use the ultimate tool in the range of tools at our disposal, which is, as I told you in my presentation, to institute proceedings. A judge will determine that. It isn't our officers who decide on the amount of the fine or whether there will be a fine. Our work is to put the case before the court and let the justice system do what it does.

Mr. Christian Ouellet: Ms. Proulx, I'm not a lawyer, but I was a court expert in Quebec for a very long time. In the acts that were brought to my attention, there was no way of avoiding the minimum fines imposed or other penalties. Would it be because there is a difference between the common law and the Civil Code of Quebec that there is a possibility in common law to reduce the fines? As the gentleman said earlier, you see that in all the acts, whereas you don't in Quebec.

Mrs. Chantal Proulx: The criminal law in Canada is contained in a range of federal statutes. I believe that, in the absence of a provision, within an act, that prevents someone from being released from minimum penalties by reason of undue hardship, the application would be made under the Charter. The Charter is of national application. It applies to all federal laws, and the application that would be made by such a person would be exempted from the application of an act as a result of cruel punishment.

● (1005)

Mr. Christian Ouellet: The purpose of my question was more to determine whether this arose because it was a matter of common law rather than of the Civil Code.

Mrs. Chantal Proulx: I find it hard to answer your question because the Civil Code does not really apply in criminal law.

Mr. Christian Ouellet: That's part of the criminal law, not the Criminal Code.

Mrs. Chantal Proulx: Bill C-16 is a criminal law.

Mr. Christian Ouellet: Do I have a second left? No, it's over. Thank you.

[*English*]

The Chair: *Merci.*

Mr. Watson.

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

Returning to the question of the undue hardship clause, I'm looking for an opinion from our panellists on whether they foresee this particular clause being invoked very much. In other words, is there a danger that something less than the minimum fines laid out in this legislation will become routine?

Ms. Sarah Cosgrove: Our rationale behind including that clause, wording it the way it's worded, and requiring the reasons to be provided was to ensure that it's not used often or inappropriately.

Mrs. Chantal Proulx: It is up to a defendant to determine what arguments they want to raise before a court. It's difficult to estimate the number of people, or other types of individuals, who may wish to raise this, but I can tell you that on its plain meaning it appears to be a clause intended to be used in exceptional circumstances.

Mr. Jeff Watson: My question wasn't geared toward how many people would use it. The question was more to do with the outcome, whether you see something less than minimum fines becoming routine. That is what I was getting at.

Mrs. Chantal Proulx: If and when the clause is raised by an individual, it would be fair to say that it would be the crown's position that it should be available only in exceptional circumstances. If courts see it differently, then that would be an argument to be advanced by the crown before appeal courts.

Mr. Jeff Watson: Madam Proulx, in your opening statement you raised the issue of a constitutional challenge. I don't know if that was related to something specific, or whether you meant that generally speaking you expected constitutional challenges to result from this bill. Would you care to elaborate on where you see potential constitutional challenges?

Mrs. Chantal Proulx: You're correct in saying that I wasn't specific. I alluded to constitutional challenges in a general sense. When one sees mandatory minimum penalties, as a prosecutor, one inevitably turns one's mind to possible constitutional challenges.

Mrs. Erin Eacott: There's nothing specific that we thought might cause a constitutional challenge, but when you have a new bill and you have minimums, there's a potential.

Mr. Stephen Woodworth: That leads right to my question. I want to try to drive a nail into the coffin on this.

As I understood you to say, a mandatory penalty without an undue hardship exemption clause can be found, or has in some cases been found, to be unconstitutional. Is that correct?

Mrs. Chantal Proulx: That's correct. I think it's more vulnerable.

Mr. Stephen Woodworth: So by allowing the exemption, we are in effect trying to immunize the bill against a constitutional challenge. We're trying to make the bill Constitution and charter compliant. Correct?

Mrs. Chantal Proulx: I think so.

Mr. Stephen Woodworth: Thank you.

There was questioning on the last day about the issue of judges having the power only to recommend, rather than to order, payments to organizations. I'd like to hear from Ms. Cosgrove or Ms. Tingley about whether there have been problems in the past with judges ordering payments to specific organizations.

● (1010)

Ms. Sarah Cosgrove: We should start by mentioning that the policy objective behind the amendment proposed in Bill C-16 is not to remove discretion from the judge; rather, it is meant to add a level of accountability to the process of allocation of funds. It's our intention to amend the EDF policy once the bill comes into force. This would be to ensure that where a judge has made a recommendation, priority would be given to the EDF funds directed towards that organization, pending its ability to demonstrate that it can spend the money on the intended project and in the intended timeframe.

There have been rare instances in which organizations have become insolvent or are incapable of spending the funding. When that situation arises, the funds sit in limbo. Although that doesn't happen in the majority of cases, the bill's amendments were aimed at ensuring that the funds would be spent on environmental restoration.

The Chair: Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

Ms. Tingley or Chantal Proulx, which jurisdictions would you look to most closely to come up with best practices for this environmental enforcement package?

Ms. Sarah Cosgrove: We looked at multiple jurisdictions, specifically in respect of a fine scheme and the amounts proposed for minimums and maximums. British Columbia and Ontario were looked at, and the maximums we're proposing reflect the maximums in several statutes found in Ontario.

Mr. David McGuinty: What about other nations—the United States, Australia, Japan, Germany?

Ms. Sarah Cosgrove: We looked to other jurisdictions, but in the end we found that, given the different legal systems, the Canadian jurisdictions were the most appropriate for our examples.

Mr. David McGuinty: What evidence do you have for the notion that mandatory minimums actually deter environmental offences?

Ms. Sarah Cosgrove: There is a substantial amount of commentary pointing out that in general the higher the penalty, the greater the deterrent. There are studies that demonstrate that our current penalties are inadequate. The minimums proposed through Bill C-16 are part of an overall scheme aimed at giving guideposts to the judiciary and signalling that higher penalties are more appropriate for these offences. They're to be read in conjunction with aggravating factors, purpose clauses, and first principles that serve to establish the need for raising penalty amounts.

Mr. David McGuinty: Mr. Chair, I wonder if we could ask the witnesses to produce whatever evidence they have—not commentaries—to substantiate the notion that mandatory minimums have a deterrent effect in other provincial jurisdictions, including Ontario and B.C. I think that would be helpful for all committee members.

Could I go to a second question? Can anyone in the enforcement business explain to me the relationship between environmental enforcement and environmental assessment?

Mr. Albin Tremblay: I can start and maybe Kevin can add to it.

They are two very different things. Environmental assessment is a process pre-project to evaluate the consequences. Environmental enforcement is to enforce regulations.

Mr. David McGuinty: Do you look to environmental assessment processes for evidence or information about different proponents, companies, actors in Canadian society, evidence they may put forward in terms of their practices, the way they approach projects? Would you be going into that kind of documentation to build the prosecution case, for example?

Mr. Kevin Buerfeind (Acting Regional Director, Environmental Enforcement Division, Atlantic Region, Department of the Environment): We will look at all the information when we're looking at prosecution cases. All information is available to us. When we're talking specifically about environmental assessment, that's of course, as Mr. Tremblay said, to assess the viability of a project with respect to environmental concerns.

When you're looking at the enforcement side of it, we're looking at all information related to what might have happened with respect to an event—maybe a spill or some sort of other violation—so of course we'll broaden our perspective to ensure we take all evidence into account.

Mr. David McGuinty: So the fact that the government is now, for example, removing environmental assessment for virtually every project under $10 million in this country, except for projects that take place inside national parks, park reserves, national historic sites, or historic canals, would have a bearing on environmental enforcement, wouldn't it?

● (1015)

Mr. Kevin Buerfeind: Unfortunately, I can't answer your question. I'm not an expert on environmental assessment. I can only speak from the law enforcement capacity and how we do our business with regard to investigating offences.

Mr. David McGuinty: Madame Proulx, if the court is seized with a prosecution matter, would your prosecutors not be looking for the full panoply of potential evidence to table in court? For example, if a major corporation is pursuing an environmental assessment process, putting forward its own record in terms of environmental performance, wouldn't the court be interested in hearing that kind of broadened evidence about the performance of a corporation?

Mrs. Chantal Proulx: Certainly each case is different.

I'll ask Mrs. Eacott to comment, as a prosecutor on the front line.

Mrs. Erin Eacott: It depends on the case and what sort of evidence they're going to bring forward and whether or not it's relevant to the actual circumstances of the offence. Lots of times corporations want to show they're good corporate citizens and bring all their history of all the good things they've done, including environmental assessment, but they're not necessarily relevant to that offence at hand. They might be somewhat relevant from a sentencing perspective as to what the total penalty would be. But I've had instances where there have been ongoing environmental assessments at the same time as a prosecution is going forward, and from my perspective, other than the fact that there might be a few tidbits of factual evidence related to the offence, a lot of that information isn't relevant.

Mr. David McGuinty: Thank you.

The Chair: Before I turn it over to Mr. Jean, one of the things we discussed at last week's meeting was a concern about the safety of our enforcement officers. As they are going to be policing with these more expensive fines, and especially if you take a look at what's happening possibly in poaching in the wildlife area and people being out there with high-powered rifles, there is concern about our park officers as well as wildlife officers being in danger. One of the reasons we wanted to have enforcement officers here was to talk about the safety aspect. And I just want to get some comments on whether there is a concern from the officers themselves and whether or not they have the tools and equipment to properly protect themselves in those situations.

Mr. Albin Tremblay: A poacher is quite different. Maybe I could ask my two colleagues to elaborate on that, starting with you, Kevin, on the environmental side.

Mr. Kevin Buerfeind: Of course there's always a concern of potential risk to the enforcement officer when you're dealing with law enforcement of any type. Fortunately, we have a lot of training. We do a lot of risk analysis. Whenever we embark on any type of activity, we'll do a complete risk assessment of what might happen in any type of activity or event. So I feel we're well trained and well prepared to respond, and the fact that we're proactive in looking into situations in advance of potential concerns, I feel we're in good shape.

The Chair: And on the wildlife side?

Mr. Gerry Brunet: I think Kevin has said it very well. As Mr. Tremblay said, we are a little different. Our clients are different. On the wildlife side, we do deal with armed hunters and so on, but we are issued the tools. We have all the use-of-force tools similar to other peace and police officers out there.

So I concur with what Kevin said. We're in good shape.

The Chair: I wanted to get one further comment from Madam Cosgrove on the issue of undue financial hardship.

We've already framed it that this is needed because we have to be compliant constitutionally in the bill. Are there other examples of bills and legislation—from Health Canada, or the Canadian Food Inspection Agency—that use the same type of wording to provide those, I guess, exemptions?

Ms. Sarah Cosgrove: I personally am not familiar with any examples that I could provide you with today.

The Chair: Okay. Maybe we can get some examples around why we've done it, why it's important, and what other Canadian legislation has the same criteria.

Mr. Jean.

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

I actually practised in this area, in northern Alberta, for a period of time. I had an opportunity to represent some 16 of the 23 Wildlife Act offences that were prosecuted in 2001 in Fort McMurray and area. So I do agree with the department's analysis that if the undue hardship clause were not in there, the minimum fine provision would probably be struck down under the Constitution. I think it's absolutely necessary to have that in there.

I'm interested specifically in this part. It seems that indeed the deviation from the guidelines is very similar to the child support guidelines that have been successful. I know that's not your expertise as far as practising goes, but the child support guidelines, when they came in, I think in 1999, were very successful. Judges did not deviate from the child support guidelines, much the same as this, because they had to give written reasons. Of course, the written reasons, if they were not sufficient, would be appealed.

It appears to me that, just as a matter of practice, it would be extremely unlikely that any judge would deviate from the guidelines—unless, of course, there were tremendously extenuating circumstances to do so, and then there would be justification to do that.

My interest has to do with the cost of doing business for large corporations. We've seen this on an ongoing basis with ballast discharge in the Great Lakes and, in fact, in our oceans and other areas. Can you describe, just in general, the economics of the kinds of cases where large corporations will continue to pay fines rather than comply because it's easier for them to do so by way of the cost of doing business? Is it possible, do you think, under this particular act, with these amendments, that corporations would actually do that?

● (1020)

Ms. Sarah Cosgrove: I'm sorry, that corporations would continue...?

Mr. Brian Jean: To not comply with the act because it's cheaper to not comply and just pay the fine.

Ms. Sarah Cosgrove: Our proposals include all of these measures to ensure that at time of sentencing the judge comes up with the sentence that does the exact opposite. It ensures that this is beyond the cost of doing business.

In addition to providing guideposts to instruct an appropriate sentence, there are additional powers that the court can rely on in coming up with creative sentencing. There's also a mandatory order that would have to take place if the crown were successful in showing that the offender profited from the offence. There would be an order to receive, in addition to the fine, that amount of profit.

So I think the bill addresses that particular concern.

Mr. Brian Jean: Absolutely. I just wanted to draw attention to it, because I do think in this bill the department has been very successful in setting out an end to that particular practice by large corporations.

In fact, I took note of the provision about notice to shareholders. I thought that was an excellent provision in terms of some of the investments being made. I was wondering if you could describe that a little bit more.

Ms. Sarah Cosgrove: The bill also includes a mandatory provision requiring convicted corporations to report to their shareholders. It's an order we put in place requiring that corporations report to their shareholders on the conviction and the details of the conviction.

Mr. Brian Jean: Is it the belief of the department that the threat of that kind of notice, especially to shareholders, would bring compliance prior to the activity being undertaken, or prior to any kind of accident?

Ms. Sarah Cosgrove: Absolutely. We're quite certain that corporations monitor closely what legal requirements they're obliged to pursue. They do look to the penalty provisions associated with those. They keep those in mind.

Mr. Brian Jean: Great.

Do you agree that the bill's focus on restoration and compensation is adequate in the circumstances?

Ms. Sarah Cosgrove: I do believe, yes, that the bill's focus on compensation is...many of these provisions are new. Some of the provisions codify and provide additional weight to developments in the common law, and this is meant to bring the sentences up.

Mr. Brian Jean: And to make sure the sentences are consistently applied?

Ms. Sarah Cosgrove: Absolutely.

Mr. Brian Jean: Thank you.

Those are all my questions, Mr. Chair.

The Chair: Thank you.

In the interest of time, we'll dismiss our witnesses. I want to thank you all for coming and presenting today. It was definitely a fulsome discussion, and we appreciate the input. We'll dismiss you from the table, and we'll call up our next witnesses.

While we're waiting for the table to clear, I want to remind committee members that we will be going upstairs at 11 o'clock for the tabling of the report and the lock-up with the environmental commissioner in room 237-C from 11 o'clock to 12 o'clock.

● (1025)

Mr. Justin Trudeau: When were the invitations sent out?

The Chair: Those invitations were sent out a couple of weeks ago. It was circulated out. So we have that at 11 o'clock.

Also, we just circulated our proposed work plan for your information. Look it through. If there are any changes, we can deal with them at Thursday's meeting. If nothing is raised, then we'll be going with this plan.

I will be attending the Liaison Committee today at one o'clock to present our budget for travel to Alberta.

Perhaps we could have Linda McCaffrey, please, from Ecojustice Canada, approach the table.

Mrs. Linda McCaffrey (Director, Environmental Law Clinic, Ecojustice Canada): Ladies and gentlemen, I've looked at the WAPPRIITA provisions, I've looked at the administrative monetary penalties as well, and I have a lot of concerns, far more than I can tell you in five minutes. But perhaps I can hit some of the major concerns.

People have been very concerned about the small-revenue corporation and also about the financial hardship provisions. I have a little different take on those as a former prosecutor and as a sometime defence counsel. The problem with the small-revenue corporation being sentenced separately, differently, from the large corporation is an evidentiary problem. The gentlemen in green, I suspect, are not auditors and are not accountants, and they will have a lot of difficulty trying to assemble evidence to establish whether a corporation is a small-revenue corporation or a big-revenue corporation. If they are unable, because of lack of resources, to do that.... For any privately held corporation, there's nothing publicly available in the information. There are no filings with security commissions or anything like that. Even if it's a publicly traded corporation, the annual report and the quarterly reports will give you revenue figures, but they won't give you revenue figures that take you to the year immediately preceding the offence date, which is what is required in your statute.

If the statute read differently and you could look at the revenue figures in the annual report for the preceding fiscal year for that particular corporation, then you could conveniently get that evidence for purposes of sentencing for a public corporation. For a private corporation, you need an audit team. And you're going to have some trouble, because once the conviction is entered, the judge is going to say to the prosecutor that we are now going to proceed with sentencing and will ask whether to sentence this corporation as a small-revenue corporation or not. If the prosecutor says that we're proceeding as a small-revenue corporation or the opposite, the judge will ask on what evidence he or she should proceed on that basis. And if that evidence is not before the court, then the defence will pop up and say, “You cannot proceed with sentencing. Thank you, Your Honour, and thank you Madam Prosecutor. We'll see you in due course.” It will be a big embarrassment if that is not addressed and corrected before this legislation is finalized.

That is also a problem in the case of financial hardship. If you're not financing an audit team, then your prosecutor is going to get sandbagged, because every corporation will come in with some credible-looking, smooth person who will say that this will be a terrible financial hardship for them. And in the absence of any provisions for prior disclosure of the intent of the corporation to plead that section and prior disclosure of their data and some sort of opportunity to investigate, your prosecutor is going to be barefoot and embarrassed. And you'll read about it in the paper.

Anyway, that's what I wanted to say about those particular sections.

I would like to talk to you also about some of the other sentencing provisions. In general, you are really trying to micromanage the sentencing process. I don't know if that's very respectful of the judges, but there it is. Proposed subsection 291(2) says that the court can order an offender to publish details of the offence, and if the offender doesn't, the minister can publish it and recover the cost. That's not going to happen. People are not going to be following up on that. It's simply an impractical provision.

● (1030)

Proposed section 287.1 lists a lot of factors that the court is required, as opposed to empowered, to consider. That places a very difficult evidentiary burden on the prosecutor. The court has to consider—it has a legal obligation to consider—and therefore the prosecutor is going to have to adduce evidence on each and every one of those criteria. If it's not there, then the court can't consider it, can't carry out its statutory obligation. I don't like the way that legislation is written for that reason.

I see that you have immunity from personal liability for the people enforcing this legislation, and that's a very good idea. I see in the notes that it is supposed to be for acts done within the scope of their authority. But nowhere does it say that the immunity is limited to acts done within the scope of their authority, and that should be picked up and addressed.

I see there's also a due diligence defence here. It says there is a due diligence defence available on these enforcement provisions, and it doesn't talk about the other great common law defences in regulatory matters, the defence of reasonable mistake of fact or officially induced error. The intent is very unclear here. Does it mean that you can't plead those defences? It should be addressed.

There are a couple of very troubling provisions on the administrative monetary penalties. The first one is that the due diligence defence and reasonable mistake of fact defences are excluded. Officially induced error is not. There is no apparent principled reason for that. You are creating absolute liability. It may or may not be unconstitutional. I should let you know that in Ontario this legislation has been on the books since 1998. It was brought in as part of the common sense revolution, but there were never any regulations brought in to make it happen. From 1998 to 2005 nothing happened. In 2005 the provisions were repealed and re-enacted, and they still haven't been used. There is a way to maybe ensure that these provisions will be used. One way to do it might be to require that there be an annual report filed with the legislatures so the legislatures will know whether the administrators are actually taking advantage of that legislation.

There are a couple of troubling provisions in proposed section 9. Ships' masters and pilots are liable for violations of a crew member or any other person on board the aircraft or ship. If the ship or plane is hijacked by terrorists and they murder somebody, the pilot gets the violation. That does not make sense at all. There is also a troubling provision in proposed section 16 of the administrative monetary penalties. It gives the chief review officer the right to cancel a violation notice at any time before a request for review. That is not a transparent process, and at some point there will be questions about why a violation notice was killed. Somebody will leak something at some point. That should be addressed. Violation notices should be posted on some public register, and if there's going to be a cancellation, it should be posted on the public register with reasons therefor. That process needs to be transparent.

I've used my five minutes. I'll stop there.

● (1035)

The Chair: Thank you, Madam McCaffrey.

We have 25 minutes before we need to be out of here and upstairs, so I think we'll do one round of six minutes so that we can get everybody on the books.

I also want to say that since we want to start clause-by-clause on April 23, I'd ask that all members who are proposing amendments have them in to the clerk by April 21. Please take note of the date and have them ready to be forwarded at that time.

Mr. McGuinty, you have six minutes.

Mr. David McGuinty: Thank you, Mr. Chair. I'd like to come back, perhaps after the meeting, to get a sense of the dates of April 21. That's very soon, given the schedules we have now and given break weeks and other work items in this agenda.

I would like to go back to Mrs. McCaffrey.

First of all, I really want to thank you for showing up today. I really want to thank you for putting all the work into this. I've counted at least 13 or 14 fundamental questions that you've raised about this bill. Were you consulted prior to this or during the process of the drafting of this legislation?

Mrs. Linda McCaffrey: No. I got a call on Thursday, and I understand Linda Duncan recommended that I be invited. So I started looking at the legislation on Friday and again yesterday. I did put quite a bit of work into it and I hope it will be productive.

Mr. David McGuinty: Would you be able to reduce much of what you've said into a brief for this committee to examine and to put into sequence the probative points you've made here about different parts of this legislation?

Mrs. Linda McCaffrey: Yes, I could submit a brief, and then I could pick up some smaller items that I didn't mention.

Mr. David McGuinty: That would be very helpful.

Could I go back to your comments about the specificity of the bill and about trying to effectively dictate to judges and the judicial process what shall be presented, what shall be decided? I put a question to officials here earlier about whether there was any evidence to substantiate, for example, that mandatory minimums actually work in any jurisdiction for environmental enforcement. I didn't really get an answer. I heard about reports, some analysis, and so on. I'd like to ask you, first of all, to just hold that thought. Give the committee some insight on your view on that.

Secondly, I think it's no secret that the government, this particular party, has had an aversion to judicial discretion since its arrival and way before its arrival, through its leader. They believe the judiciary should be clamped down upon. In your experience as a prosecutor—and you said you've done some defence work—could you help us understand the risks with that kind of approach that are inherent in this bill?

Mrs. Linda McCaffrey: It is demeaning to the judicial process and to the judges. Sure, we all read in the newspaper about apparently wacky sentencing here and there, but very often those are urban legends. The McDonald's lawsuit where a lady spilled a cup of coffee in her lap and got millions of dollars in damages is one of the urban legends. She did spill coffee in her lap; it was boiling. They had been warned not to heat it so high and she had third-degree burns to her thighs. So the urban legend is quite misleading.

We have these urban legends on sentencing, and occasionally a court may go wrong. We have rights of appeal to address that. That's what they're for.

Judges are overwhelmingly diligent, just as legislators are overwhelmingly diligent, and they want to do justice. An individual may see it differently from a judge. Any of us may see it differently. We are all fallible human beings. But it is not respectful to the judicial process or to the individual judges to be prescriptive as opposed to empowering.

● (1040)

Mr. David McGuinty: Can I ask another question? I put it to the group that was here earlier and I'm trying to understand the connection between environmental assessment requirements in this country, the evidentiary implications of environmental assessment processes. I would just assume that proponents of projects who are going through an EA process would be expected to provide quite a considerable amount of information about their organizations, about how they have conducted their affairs in the past, and about their precedent practice in other projects as proponents. If we remove, as the government is proposing or actually doing, all environmental assessments for projects under $10 million, you would not believe how prescriptive that list is, outside of parks and a few other exceptions.

Mrs. Linda McCaffrey: No, I'm familiar with it. I've been looking at that legislation.

Mr. David McGuinty: Is there a connection here? On the one hand, the government says it's about removing green and red tape to shovel money out the door—important stimulus money, I'm not demeaning it. On the other hand, government is now putting this very prescriptive and onerous set of environmental enforcement provisions on Canadian independent actors. I can't reconcile these two. Can you?

Mrs. Linda McCaffrey: Well, the amendments to the Canadian Environmental Assessment Act are being reviewed by Ecojustice. Our Toronto office is taking the lead on that review. Our preliminary conclusion is that the environmental assessment act has been gutted. It has been effectively amended by regulation, and that regulation is ultra vires. Whether we will be able to institute a judicial challenge and whether we will win is another issue. Assuming there's no challenge or assuming we lose it, then because there is no adequate meaningful screening process, there will be a loss of preventive action. That will create additional food for prosecution, but it will not of itself create additional capacity in the system to prosecute.

The Chair: To be fair to the other members, we have to keep on schedule.

Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: The witness answered my questions in his presentation. I will give Ms. Duncan my time.

[*English*]

Ms. Linda Duncan: Thank you.

Thank you, Ms. McCaffrey, for voluntarily taking the time to review the bill for our benefit. It's been very helpful and it will be very helpful for the clause-by-clause.

I am mostly going to let you just continue talking, because you've obviously done a lot of useful review, and the time is painfully short for witnesses in this committee. But I would like to ask you one specific question.

It's my understanding in environmental law , over the history of prosecutions, that the most valuable factor in sentencing and, in fact, the most useful powers of the court have not been the fines imposed but the innovative sentencing provisions. I'm just wondering what your comment might be. The focus of these amendments seems to be on imposing higher and higher minimum penalties, when in the courts the experience has been that for the most part, the prosecutors seek innovative sentencing.

Mrs. Linda McCaffrey: I can tell you that the prosecutors don't. Ontario has provisions similar to your provisions—restitution orders, compliance orders. The court can order the company to take steps to prevent a recurrence of the problem. It can order restitution to a victim of pollution. Ontario has had that legislation for years and it is little used, precious little used. The reason is bureaucratic. You have compliance officers who issue orders in one part of the bureaucracy, and then you have a separate enforcement group. They don't issue orders. They're not about securing compliance that way. They're about securing compliance by charging a person and having them penalized. Those groups don't work together very well in Ontario, and I suspect they probably won't work together very well in the Government of Canada.

So the prosecution service does not bring forward evidence on which the prosecutor can ask for a compliance order or a restitution order. And again, if it's going to be restitution you have to put a price on it, right? So what is the cost to the victim or what is the ill-gotten gain? How do you price it? A compliance officer may have some idea that the company might have saved a million dollars by not installing certain pollution abatement equipment, but that information has to get over to the other side, and very often they don't have that kind of information. You'd have to hire a consultant to do an environmental audit and a pricing. Again, I don't think your enforcement services are going to have those resources. That's not the kind of training they get.

● (1045)

Ms. Linda Duncan: So are you then supportive of the new provision in CEPA that will give the judge only the power to recommend to the minister and then leave it to the minister to decide whether or not some action should be taken?

Mrs. Linda McCaffrey: No, that's nonsense. The judge should have the power to act or not.

Ms. Linda Duncan: In the opening statements by the senior enforcement officer and in his presentation, he talked about the overall need to have all the tools to actually encourage deterrence. They mentioned that they actually belonged to the International Network for Environmental Compliance and Enforcement, which I've been part of. One of the principles that have come out of that very clearly is that true deterrence is not fostered by having heavy penalties in legislation; true deterrence is fostered by the reasonable apprehension of actual prosecution and conviction.

Would you agree with that? And if that's the case, then is it perhaps equally important that we be encouraging the government to bring the cases to court, or to enable private prosecutors to bring the cases to court, to actually cause the deterrence?

Mrs. Linda McCaffrey: Private prosecution is essential. By way of example, Ecojustice, with two lawyers for the whole province of Alberta and 12 for all of Canada, was able to prosecute Suncor for the dead ducks. It took Canada and Alberta, with all its massive resources, month and months to decide that they indeed would do it themselves.

The problem is that Ecojustice is the only NGO that prosecutes, that sues the government, that sues polluters. We are the only litigation group among the NGOs. All the others focus on law reform. As I say, of us, there are 12 for all of Canada. There could be more of us, and there would be more, if we could prosecute and get all or a portion of the fine. Under this legislation, we can. The court actually has a right to recommend payment to the prosecutor. The court should have the right to decide that the fine will go to a private prosecutor as opposed to this environmental damages fund, which is a notional fund. It doesn't exist except as an accounting entry. The money isn't there. If that could be done, then you have money to fund another prosecution. Prosecutions are expensive. You have to take samples. You have to have them analyzed. It can cost thousands of dollars just in analytical bills. The government needs all the help it can get on prosecutions.

However, there is a terrible problem, and it could be addressed in this bill. The problem is the power of the attorneys general across Canada to stay prosecutions. In Ontario, when there are private prosecutions, the attorney general looks at the prosecution. Sometimes it will take it over and prosecute to a conclusion; other times the attorney general will simply let it proceed, having satisfied itself that it is a proper prosecution.

In B.C., the practice of the attorney general verges on scandalous. Back in 1997 there was a decision of the B.C. Court of Appeal. Ecojustice's predecessor, the Sierra Legal Defence Fund, prosecuted the City of Vancouver for discharging raw sewage into the ocean. The court said, “Oh, gosh, you've prosecuted them five times already. They're still doing it. On each occasion the attorney general stayed the prosecution, and now you're saying we should not permit this stay. But sorry, we can't interfere, as courts, with that exercise of discretion unless we had evidence of flagrant impropriety or corruption.”

Well, fast forward to 2007. Ecojustice laid charges under the Fisheries Act, I believe, in respect to Vancouver still discharging raw sewage into the ocean. And guess what the Attorney General of B.C. did? He stayed the charges.

Between 1997 and 2007, provisions were introduced in the Fisheries Act where a private prospector cannot just go out and lay a charge. There has to be an evidentiary hearing, to which the defendant and the attorney general are parties, and the private prosecutor has to satisfy a justice of the peace at that hearing that it is a prosecution that can properly go forward, that there is a strong evidentiary basis, and that there is a strong legal basis. There is a procedure in that statute to make sure there are no wildcat nuisance prosecutions. And still, it was stayed.

● (1050)

You need legislation that prevents that. I think that legislation can be passed. I'm not legislative counsel, but the wildcat activity is all on the side of the attorneys general. What you need is a constraint on the absolute untrammelled discretion of attorneys general to stay prosecutions. The principles on which you should be acting are simply that if the attorney general wants to stay a prosecution, he can do so, but he has to provide reasons and he has to demonstrate in those reasons that the stay is in the public interest.

Ms. Linda Duncan: I'm just wondering, in the time left, if there are additional issues that you found in that bill that might be helpful to us in the clause-by-clause, where we were unable, as I understand, to add provisions. But we certainly can propose that provisions be struck out or amended. Is there anything additional that you have come across?

Mrs. Linda McCaffrey: There is some creative English. People can be “jointly and severally, or solidarily, liable”. S-O-L-I-D-A-R-I-L-Y. What in the world is that? The word doesn't appear in the *Canadian Oxford Dictionary*. I have practised law for 40 years, and I have never heard of anyone being solidarily liable.

There is also a reference to a creature called a “mandatary”, another word that's not in the *Canadian Oxford*. It's not defined in CEPA. I don't know what a mandatary is. I did get some help from the clerk. He had a good French dictionary, and he guessed that it maybe was a designate. If it is a designate, it should say that. Why invent words?

The Chair: We're going to move on.

Mr. Woodworth, please.

Mr. Stephen Woodworth: Thank you.

Ms. McCaffrey, thank you very much for your contribution here today. I found some of what you have had to say to be helpful. I have found some of what you have had to say to be inviting challenge, if I may put it that way.

On the last point, I rather suspect, although my knowledge of French is not that great, that the issues you've raised about those words may be translation issues, but I'm sure somebody will look into that, and I appreciate your bringing them to our attention.

The thing I found most difficult to accept in your submissions was the suggestion that if a ship were hijacked, the master would be liable for acts of murder committed by the hijackers. Do I recall correctly that you worked for some 15 years in the province of Ontario as a prosecutor, first of all?

Ms. Linda McCaffrey: Yes.

Mr. Stephen Woodworth: So I find it difficult to believe that someone with your experience would suggest that a statute would make anyone liable for an involuntary action. I'm thinking of some shipowner or master being tied up in the corner while others are running about committing mayhem—

Ms. Linda McCaffrey: That's what it says.

Mr. Stephen Woodworth: —and I'm surprised that you would suggest that any criminal or quasi-criminal statute would result in criminal or quasi-criminal liability for, in effect, involuntary actions. Is that really what you're telling us?

● (1055)

Mrs. Linda McCaffrey: That's what it appears to say. It seems to create an absolute liability, and I think it's unconstitutional. It would actually have to be a pollution offence, but it could easily happen that there could be an oil spill in the course of a hijacking or some sort of a spill of nasty material into an ocean or out of a plane.

Mr. Stephen Woodworth: So your take on it is that an absolute liability offence, in fact, makes someone liable for the acts of others in this case?

Mrs. Linda McCaffrey: Well, in the absence of any defence, yes. That's what strict liability is. Strict liability is where you have defences like due diligence and officially induced error.

Mr. Stephen Woodworth: I thought for a while you had more faith in judges than I do, but I think I have enough faith in the judges to assume they wouldn't impose liability for involuntary acts.

But be that as it may, the other question I wanted to ask you is whether you've reviewed the existing fines that are being handed down and environmental offences under the Migratory Birds Convention Act and other acts we're amending here, and are you satisfied that the courts are being tough enough in the fines they're handing down right now?

Mrs. Linda McCaffrey: I don't know whether the courts are being tough enough in the fines they're handing down now, but the real problem is the problem that you don't see. You've created liability for officers, directors, employees, people like that. I'll tell you what happens; you probably know anyway. A prosecutor will charge the corporation—an officer, a director, an employee, whoever. They'll lay charges against a number of individuals as well as against the corporation. Then it comes time to plea bargain. Then what you want to do is get your individual clients off and let the corporation take the rap, because these people don't want convictions against their names personally. Prosecutors, being busy people with many cases to prosecute, want to make as many plea bargains as they can. The most common plea bargain is that you withdraw the charges against the individuals, the corporation takes the rap, and you negotiate a penalty for that corporation.

You might have had four penalties if everybody had been prosecuted to the conclusion. You'd have a greater—

Mr. Stephen Woodworth: I didn't want to interrupt you, because I've chastised my colleagues for interrupting, but my question was whether you're satisfied with the penalties that judges are handing down under the existing penalty provisions of these various acts.

I might also ask you whether you think the existence of mandatory minimums might up the bargaining power of the prosecutors in those plea bargains and whether we might see some stiffer penalties as a result in those circumstances.

Mrs. Linda McCaffrey: I think there's some merit to the mandatory minimums. They do raise the bar.

Mr. Stephen Woodworth: As for the judges, do you think you're satisfied with what judges are doing in penalizing these offences?

Mrs. Linda McCaffrey: In general, yes. When you read the reasons for a judgment, it usually makes sense, but a person may not believe or accept that the findings of fact were as comprehensive as they should have been, and that of course would make a difference in the sentencing.

● (1100)

Mr. Stephen Woodworth: Here is what may be one last question.

The Chair: Your time is just about up.

Mr. Stephen Woodworth: Do you think it's legitimate for a legislator to put out legislation that sends the message to judges that they ought to treat certain offences, such as environmental offences, more seriously? Do you think that's a legitimate legislative function and that it's not going to demean judges if we do it?

Mrs. Linda McCaffrey: No, I think judges have to know that the legislature takes it very seriously. Certainly they will know that by the maximums, but I'm not saying that minimums are necessarily a bad thing.

The Chair: Thank you.

I want to thank you, Ms. McCaffrey, for appearing.

Mr. McGuinty has a point.

Mr. David McGuinty: Mr. Chair, could the clerk follow up with the officials of the government to get the evidentiary documents I'd asked for?

Ms. McCaffrey, if you'd be kind enough to do it while you're still here, to reduce to writing what you have would be very helpful, in anticipation of the proposed timelines we have to take up on Thursday.

The Chair: That sounds good. We'll be talking about timelines and stuff like that on Thursday. I'll follow up with the minister.

With that, I'll entertain a motion to adjourn.

An hon. member: I so move.

The Chair: We're adjourned.

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