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● (0900)

[*English*]

The Vice-Chair (Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.)): Welcome, everyone, to the 17th meeting of the Standing Committee on Environment and Sustainable Development. Today is our last meeting with witnesses on the subject of Bill C-16, an Act to amend certain Acts that relate to the environment and to enact provisions respecting the enforcement of certain Acts that relate to the environment.

Our witnesses today are from the marine industry. I thank you for being here today. I know some of you came from far away, as far away as British Columbia. You're representing essentially three groups, the Canadian Maritime Law Association, the International Ship-Owners Alliance of Canada Inc., and the International Transport Workers' Federation. The way we will proceed is that each group will be given eight minutes to present, and that will be followed by rounds of questioning.

Would you, Mr. Boucher, like to go first today?

Mr. Boucher, welcome. We look forward to hearing what you have to tell us.

Mr. Mark Boucher (National President, Canadian Merchant Service Guild, International Transport Workers' Federation): Thank you very much.

I'm Mark Boucher. I'm the president of the Canadian Merchant Service Guild, a professional association of 5,000 Canadian ships officers. The guild is an affiliate of the International Transport Workers' Federation, or ITF, representing over 600,000 members in all sectors of transportation. The ITF works to improve conditions of seafarers of all nationalities and promotes regulation of the shipping industry to protect the interest of seafarers. While the guild represents primarily licensed officers and senior crew members and marine pilots in Canada, the ITF represents almost all categories of the 15,000 seafarers on the ships in Canada's domestic industry.

The guild did send in its own written submission, but I'm comfortable to speak on behalf of the entire ITF caucus, because the guild is saying the same things as the ITF is saying. We take a very special interest in legislative matters affecting all Canadian seafarers.

I know you had to make a decision on short notice regarding whether to hear from us today, and we certainly appreciate the opportunity to be able to speak to you on this matter.

I want to say from the outset that seafarers are on the front lines of pollution prevention, and the Canadian seafarers, in particular, have a very good track record. Both seafarers and their representatives are in favour of having effective laws concerning environmental protection, and we recognize and support Canadian society's strong disapproval of environmental offences.

Bill C-16 amends a number of pieces of legislation affecting seafarers, including the Migratory Birds Convention Act and the Canadian Environmental Protection Act. These were also the principal pieces of legislation that were amended in 2005 by Bill C-15. A disappointment that is common to both Bill C-15 and now Bill C-16 is that it was very late in the game when we became aware of this piece of legislation. The guild and the ITF are more accustomed to being invited to provide input regarding proposed legislation in the marine transportation field, where we have been working closely with Transport Canada, and where consultation is held in an early and meaningful manner with a broad cross-section of groups, regarding important pieces of legislation such as the Canada Shipping Act. For many years we have contributed valuable input to transportation legislation in this manner, and that has provided us an opportunity to have a clear understanding and a certain comfort factor with a number of controversial proposed legislative changes. However, it was only yesterday that the guild and the ITF were given any opportunity to be briefed on Bill C-16 by government officials and to ask questions and provide comments.

It's more important, though, that I point out that the marine industry is having tremendous difficulty recruiting Canadian seafarers. This is a worldwide problem in the seafaring industry everywhere, and the key point today that I wanted to make. The average age of the seafaring workforce in Canada is very high, and we are trying to address this chronic shortage of seafarers right now by doing everything we can to recruit young people into the industry.

The guild and the ITF have a number of promising HR initiatives under way in cooperation with several other organizations, and we're making some progress on the quality of life ingredients for seafarers, but more progress needs to be made.

We need to ensure that effective training schemes are in place for entry-level positions and for career development and progression to senior levels, aboard ships as well as in pilotage. The entry-level positions and then the junior officer positions are the feeder groups for senior-level positions, not just on ships but in pilotage work and for certain shore positions in industry as well as in the regulatory field and government.

One of the things that are bound to affect the recruiting efforts that are under way and that scare off potential candidates is this type of legislation. Bill C-15 didn't help this situation, and it is not being corrected now. In our view, we see the problem being taken up another notch. What we see Bill C-16 doing is communicating to potential candidates in the marine industry that if you are a seafarer, you might get caught up in this, and you might be fined huge amounts of money and spend a fortune trying to defend yourself. These are very negative things when we are trying to attract new people into the marine industry. Canada needs a strong marine industry. We need to be able to attract a new generation of seafarers and do everything we can to make it fair for them and not have them treated unfairly.

We feel that this bill is unfair. One of the things it is proposing to do is reduce the crown's job by making it easier to get a conviction. We see this as a serious disincentive and a threat to having a strong domestic seafaring industry, which is important to Canada. Whether we foster it in legislation or not, Canada is a maritime nation, and the marine shipping that's going on right now across the country is vital. We need to build the marine industry, and that won't happen if seafarers here are treated unfairly, making it even more difficult to recruit a new generation of seafarers.

There has been a lot of recent discussion stressing the need for increases in enforcement. The first point I want to raise concerning this bill is with regard to proposed subsection 20(2) of the Environmental Violations Administrative Monetary Penalties Act, under Bill C-16, which, on page 186, states that:

> The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation.

This is reducing the onus of proof on the crown, which would be found in a penal case where it is beyond a reasonable doubt, to the lower civil test of a balance of probabilities, which, as we understand it, means that if those hearing the case decide it is more likely than not that you committed the offence, then they have to convict, and they don't have to be concerned with reasonable doubts.

● (0905)

Our view is that in this atmosphere of an appetite for increased enforcement, which we wholeheartedly support, this proposed threshold of proof is too low. While this does simplify prosecutions for the crown, it is not affording proper rights to the accused ship's crew members, and we are concerned this will facilitate convictions.

Our second point concerns proposed section 13.15 of the Migratory Birds Convention Act, as amended by clause 102 of Bill C-16, which on page 145 states that:

> In a prosecution of a master or chief engineer...it is sufficient proof of the offence to establish that it was committed by a person on board the vessel, whether or not the person is identified...

The existing legislation now specifies in old subsection 13(1.6) that vicarious responsibility does not apply to masters and chief engineers. Bill C-16 proposes the opposite, and I'll talk more about that in a second. Not only that, but in proposed subsection 280(2) of the Canadian Environmental Protection Act, as amended by clause 73 of Bill C-16 on page 93, there's a change to indicate that:

> ...if the master or chief engineer...authorized...or participated in the offence, the master and chief engineer are a party to and guilty of the offence, and are liable....

We don't see why that was changed, because the only word that was changed was the word “are”, which indicates both of them and not just the one who may have committed the offence. Whereas before it said “the master or chief...as the case may be, is a party to the offence”, now it is proposing to say “the master and the chief engineer are party to the offence”. That change makes them both liable if either one of them does something that is unreasonable.

Obtaining the qualifications required for these senior levels of officer certifications takes many years, and it's at these senior levels that the shortage of qualified, licensed personnel is the most serious. Many of the officers at this level are fully eligible to retire right now. Increasing the criminalization of seafarers will drive them away. If that happens and the ship won't move, whatever important work the ship was doing will grind to a halt because they will have three-quarters of a crew but can't sail anywhere without key individuals. We need to do everything possible to reassure seafarers that they will be treated in a fair manner.

To sum up, we've already submitted a letter to the committee covering these same items that I've described.

We propose the removal of the new automatic vicarious liability of the master and the chief engineer that's found in proposed section 13.15 of the Migratory Birds Convention Act as amended by clause 102 of Bill C-16 on page 145.

Second, we pointed out that the revision that is proposed by clause 73 of Bill C-16, on page 93 in proposed subsection 280(2) of the Canadian Environmental Protection Act, refers to both of the seafarers in the positions of chief and master, instead of one or the other, as the case may be. We're proposing that this amendment be deleted as well.

We proposed the removal of the unacceptable reduced onus of proof that is found in proposed section 9 of the enforcement measures of the new Environmental Violations Administrative Monetary Penalties Act as enacted under clause 126 on page 186 of Bill C-16.

I've explained that we need to have a level playing field, especially since we already are having such difficulties recruiting. Despite the work that is going on, there's already too much negative publicity and too many disincentives for young people to enter the marine industry. There are already enforcement mechanisms that are effective without having to increase the criminalization of seafarers. The seafarers are employees working day to day for employers. The seafarers see themselves as the ones who would be getting hit with fines and jail terms. The employers are not going to go to jail for them, and they're not going to pay their fines for them. The pool of candidates who are willing to take that risk by becoming seafarers is decreasing.

I want to thank the committee for giving me an opportunity to present our input and comments on this important piece of legislation, and I hope the views we sent in by letter a few days ago will be given consideration.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you very much, Mr. Boucher. That was an excellent presentation. It was very clear and to the point.

I would like now to proceed with the International Ship-Owners Alliance of Canada Inc., and Ms. Arsoniadis Stein, please.

● (0910)

[*Translation*]

Ms. Kaity Arsoniadis Stein (President and Secretary-General, International Ship-Owners Alliance of Canada Inc.): I am very pleased to be appearing before you. I would like to thank the committee for taking the time to listen to us. I would also like to thank Mr. Radford for organizing this meeting.

[*English*]

My name is Kaity Arsoniadis Stein and I am the president and secretary general of the International Ship-Owners Alliance of Canada. Our group represents approximately 400 vessels, locally and internationally, managed out of Vancouver, including bulk carriers, tankers, and containers, as well as tug operators and BC Ferries, one of the largest ferry operators in the world. Teekay, which is one of our founding members, transports more than 10% of the world's seaborne oil.

I'm also here today on behalf of the Council of Marine Carriers, an association operating Canadian tugs and barges, covering the entire west coast of North America and the Arctic, and the Canadian Shipowners Association, which represents vessels trading in the Great Lakes and the St. Lawrence, with an annual trade volume of over $18 billion.

The board of directors of the Vancouver Maritime Arbitrators Association lends its full support, as well as international shipping associations, whose letters have been submitted in our brief—the International Chamber of Shipping, Intertanko, Intercargo, Hong Kong Shipowners Association, and our global partner, BIMCO.

We fully support the objective of strengthening Canada's environmental laws and making sure those laws are enforced. Our concern is that the reverse onus situation brought about by former Bill C-15 of the 38th Parliament has not been corrected by Bill C-16. It has instead created a greater problem, since the possibility of strict liability fines of $6 million will be made available on a per-day basis. With the aggravated clause, it is $12 million available on a per-day basis.

Bill C-15 has removed the traditional legal concept of the presumption of innocence, thus breaching our constitutional guarantees of section 11 of our charter. The leading case on this issue is Wholesale Travel Group, 1991, where our Chief Justice Beverley McLachlin, currently the only remaining justice who served on this, stated that "...the penalty of imprisonment cannot, without violating the guarantees in the Charter, be combined with an offence which permits conviction without fault or because the accused has failed to prove that he or she is innocent...".

It is important that we do not lose sight of fundamental principles of law. There are serious flaws associated with the loss of the presumption of innocence. One is that they breach international principles that are codified in the IMO convention and UNCLOS, to which Canada is party. MARPOL 73/78 makes a fundamental distinction between accidental and intentional pollution. The UN Convention on the Law of the Sea supports MARPOL and points to monetary penalties rather than imprisonment being the normal sanction. They provide serious criminal sanctions against almost everyone involved in the shipping operation without regard to whether the incident was accidental.

The development of these measures has had a negative effect on Canadian credibility in terms of our status as an important trading nation. These measures have, without a doubt, dissuaded business investment in Canada. Not a single shipping company that we are aware of has set up in Canada since the passing of Bill C-15.

Our government has invested $2.5 billion into the Pacific gateway and is working on a comprehensive package to stimulate the Canadian economy. If Canada, an export nation rich in resources, plans to retain and expand its current industry, our laws must be amended to provide confidence and security. Any blue chip company involved in transport that has located itself in Canada for a number of excellent reasons must now weigh these reasons against the risk of exposure to its directors, officers, and employees, and seriously consider relocating to less hostile jurisdictions.

You have letters of concern from the international community. Since the passing of Bill C-15, Canada has been blacklisted as an unfavourable jurisdiction to do marine business. It is publicized widely that Canada must amend Bill C-15 through Lloyd's List, P and I club circulars, and annual statements, and the international community is watching the progress of Bill C-16 very closely.

● (0915)

The international community is watching the progress of Bill C-16 very closely. I'll take a moment to read two excerpts.

One is from the International Chamber of Shipping, the ITF, and the Oil Companies International Marine Forum. It is a joint statement, a collective statement, and it is in the brief:

> The introduction of the "due diligence" requirement in the case of accidental or non-intentional pollution is...problematic. We acknowledge that an accused person or vessel will not be found guilty if they can show that they exercised due diligence.... However, it is unreasonable, particularly in the case of accidental pollution, to apply strict criminal liability thereby placing the burden of proof on the accused to rebut an automatic assumption of guilt. Such an automatic assumption of guilt, where imprisonment is possible, raises significant human rights concerns.

I'll also read from Intertanko's support statement:

> Bill C-15 seeks to introduce a strict liability offence for acts of pollution by individuals including a vessel's master, officers as well as the vessel's owner's directors or officers. The prosecution is not required to prove the accused's intent to commit the offence. We are very concerned that such provisions will, in effect, criminalize accidental or non-intentional pollution, and will seriously prejudice the master's or crew's action during a potential incident. While we recognize that an accused person is able to escape conviction provided he or she has proved that all reasonable steps were taken to prevent the pollution, the accused person is considered guilty and must prove his or her innocence, rather than vice versa.

The shipping industry has been requesting an amendment for the past four years and has worked very closely with Environment Canada and Transport Canada. While we fully support measures to protect the marine environment, we also seek to ensure that regulations are balanced, safeguard our crews, and do not prejudice the safe operation of vessels. We support the efforts in environmental legislation to minimize pollution and make polluters pay. These efforts should not, however, imperil individual liberty. Every individual has the right, in a modern democratic society, to the presumption of innocence. No one should be imprisoned without proof of commission of an offence and due process.

We have retained numerous lawyers to check this point for us to ensure that we're not in error. I will read from one of our statements. It's a joint legal opinion again, and it is in the brief:

> It is entirely incongruous with the principles that should guide free and democratic societies, which purport to guarantee the presumption of innocence, to sweep away those constitutional rights for those who face imprisonment for infractions which involve a lack of diligence.

Finally, we have had consultations with Sarah Cosgrove and have met with some MPs from this committee. Given their concerns, we have reconsidered our previous submission and now suggest the clause that follows, which we believe preserves the fundamental objectives of Bill C-16 yet also addresses our concerns and those of the international community.

We therefore recommend that every act amended by Bill C-16 include a clause in the following terms:

> Notwithstanding anything to the contrary in this act, where imprisonment is sought as a penalty, every accused shall be presumed innocent of the offence charged and shall at a minimum be entitled to a defence of due diligence.

● (0920)

[*Translation*]

Thank you for this opportunity to make our views known. I hope that we will find a solution that satisfies everyone.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you very much, Ms. Arsoniadis.

We have exceeded our time limit by a few minutes, but this was worthwhile, especially since you read the wording for an amendment that you are suggesting to the bill, which may be of use to us later on.

I will now give the floor to Mr. Giaschi.

[*English*]

Mr. Christopher Giaschi (As an Individual): Thank you very much, Mr. Chairman.

I am a maritime lawyer. I am the west coast vice-president of the Canadian Maritime Law Association. The Canadian Maritime Law Association was established in 1951. We are an organization composed of both individual and constituent members. Most of our individual members are maritime lawyers who practise across the country. Our constituent members come from all facets of the Canadian marine industry.

The CMLA is Canada's representative to the Comité Maritime International, an organization that was established in 1897 and that is primarily concerned with international maritime law and the uniformity of maritime laws, not just through conventions but through various national associations such as the Canadian Maritime Law Association.

The primarily objective and interest of the Canadian Maritime Law Association is the establishment of effective and modern maritime laws and, in an international context, uniformity of those maritime laws, which we have come to know is absolutely essential when you're dealing with ships that move from place to place.

One of the things we are not is a lobby group for any particular maritime interest at all. We represent all maritime interests, and most of our lawyers have acted for all interests on both sides of the fence, as we say, both for and against ships. So we're not a lobby group; we're a broad-based group that's primarily interested in effective and modern law.

We have submitted a submission that I presume you all will have had. There are a few provisions of Bill C-16 that concern us, and those are the main points, the highlights, proposed paragraph 291(1)(k) of CEPA and 16(1)(d) of the Migratory Birds Convention Act. These are the provisions that empower a court to order an offender to pay any person for the cost of cleanup, etc., following a pollution incident.

And in proposed section 274 of CEPA and proposed section 13.07 of the Migratory Birds Convention Act, there's a provision that provides for compensation for a new phrase, "non-use value". We're particularly concerned about what that is.

The other provisions we're concerned about are proposed section 13.15 of the Migratory Birds Convention Act and proposed section 9 of the new Environmental Violations Administrative Monetary Penalties Act, establishing various levels of criminal liability for the master and the chief. Some of the my friends here today have expounded upon some of those concerns.

Our primary concern with respect to these various provisions is that they tend to violate or are inconsistent with current international conventions and current Canadian legislation in relation to marine pollution. The more important conventions are, first of all, UNCLOS, which was mentioned earlier. That's the United Nations Convention on the Law of the Sea. Article 230 of that convention—I'm not going to read the complete article to you—starts out: "Monetary penalties only may be imposed with respect to violations of national laws". And this is in relation to pollution, monetary penalties only. It seems pretty clear that imprisonment should not be an option when you're dealing with something that comes under UNCLOS. It also provides in sub-article (3) of article 230:

> In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

Of course, recognized rights aren't defined there, but certainly in common law jurisdictions and also in civil law jurisdictions there are some basic rights afforded to any accused, one of which is the presumption of innocence, which I know the international shipowners have spoken on today, and they provided a number of briefs to you on that precise point. However, it is also arguably in violation of UNCLOS.

● (0925)

The CLC convention, which is an international convention related to oil pollution incidents and oil pollution damage, provides in article III:

> 4. No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention.

That specifically says that claims against the owner must be made in accordance with the convention. The next sentence says that the servants or agents of the owners, or members of the crew, are immune from any such claim. Keeping in mind that Bill C-16 empowers awards to be made against the owner and against the crew in sentencing, it's arguably in violation of the CLC.

Similarly, section 51 of the Marine Liability Act, which basically imports the CLC-type concepts into Canadian national law, provides that a shipowner shall be liable for the costs of the reasonable measures of cleanup actually undertaken. “Actually undertaken or to be undertaken” is the wording in the statute, which again would not provide for a non-use value type of award, which the new act is allowing for. That's not actually undertaken. That's something that's pulled out of the air.

Both the CLC convention and the Marine Liability Act provide for limitations of liabilities to shipowners and servants and agents in respect of oil pollution damage claims. In fact, Canada has a very sophisticated regime for compensating for pollution claims. It has multiple layers. Within Canada there is the ship-source oil pollution fund. Then there are the various fund conventions and the supplementary fund, which, in Bill C-7, we're just about to implement in Canada.

The current Bill C-16 doesn't take into account limitation of liability at all, and clearly it needs to. Essentially the problem is that in Bill C-16 we're disguising civil liability and civil compensation in quasi-criminal provisions, which is not fair and is not the right way to go. We're trying to do indirectly what we can't do directly.

Finally, I will say that we endorse the concerns that have been expressed about reverse onus, the test of the balance of probabilities, and the presumption of innocence. We have made a recommendation in our brief about at least one clause that can be put into the various pieces of legislation to ensure that international conventions that Canada has signed will have precedence whenever there is any conflict with any of these pieces of legislation.

Thank you very much.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you very much, Mr. Giaschi. That was very interesting and very helpful.

We will now open up the questioning. Mr. McGuinty will begin.

Mr. David McGuinty (Ottawa South, Lib.): Good morning, everyone. Thank you for coming.

I want to go back to the last two interventions. I have a couple of basic questions.

How extensively were you consulted by the government during the process leading up to the tabling of this bill? What kinds of meetings did you have? To what extent were these concerns raised directly?

● (0930)

Ms. Kaity Arsoniadis Stein: I will ask Peter Lahay, from the ITWF, to give the full history, because he was involved during the Bill C-15 days and is currently involved in Bill C-16.

Mr. David McGuinty: Yes. Please don't be too long, Mr. Lahay. Thank you.

Mr. Peter Lahay (National Coordinator, International Transport Workers' Federation): Thank you. No, it won't be a submission.

When we first became alarmed that the law was changing for seafarers and was going to affect our lives, it was 2005. You've heard a number of references to the former Bill C-15, which was an act to amend certain parts of the Migratory Birds Convention Act in CEPA. This concept of reverse onus and strict liability for our profession came really late into Canadian legislation. At that time we didn't find out until third reading. She was in the House, and it was at third reading. All suggestions were that an election was imminent.

There was a priority push on it to get it through the Senate, and it eventually succeeded. The Senate did hear us. We appeared before the Senate environment committee. It was a similar delegation; I was included. This time round, we learned about it in the newspaper article, about five weeks ago, I guess. Ms. Arsoniadis Stein found out about it and she alerted me. We started to decide whether we could muster an attack and try to deal with this one this time.

It was also mentioned that our first official consultation with the shipping industry took place yesterday. Environment Canada sent a delegation to the Canadian Marine Advisory Council. We've met twice a year in Ottawa every year for the last 35 years, the entire marine industry, Canadian and international marine industry. We have no qualms about saying that Transport Canada advises us of everything. They apparently didn't even know.

We think we've been treated rather shabbily, and not just this time; we put it on the record the last time as well. I hope that answers things.

Mr. David McGuinty: Mr. Giaschi, could I ask you about the conflict here between domestic and international regimes?

You close by saying that you would, at the very minimum, expect that—if I understood you—international commitments as undertaken by Canada under UNCLOS or the CLC or the Marine Liability Act ought to take precedence over any emerging domestic changes that might be forthcoming from this government's legislation. In your understanding and your experience, isn't Justice Canada, the government, tabling a 140-page bill amending ten statutes? Aren't they supposed to make sure, through their 2,450 lawyers at Justice Canada, that this doesn't come to committee, doesn't come to Parliament without having been resolved first? How is it possible that you, as a practising lawyer, are going to govern yourself now and advise your clients as to which regime is supposed to take precedence?

Mr. Christopher Giaschi: It's possible. That's what we have to do, and laws are frequently not always consistent. It doesn't make it easy, but we can certainly do it. I don't want to suggest that Justice Canada hasn't done its job, or that the environment ministry hasn't done its job. These are difficult issues, and these conventions, especially UNCLOS, are huge conventions, and sometimes it may be expecting too much for people to be aware of every little provision within every convention.

I don't want to cast blame.

Mr. David McGuinty: I'm not asking for blame. I'm just trying to get a sense of how it is that we are in the eleventh hour, just before going clause-by-clause, and you're raising fundamental problems here with the legal regime inherent in this bill. You're telling us we don't know what will take precedence: domestic law, as through the amendments of Bill C-16, or international conventions?

I'm trying to find out why this even got here without Justice Canada and the largest law firm in the country having solved these problems before this arrived. We've heard from Ms. Arsoniadis Stein that there are measures here that fall outside the ambit even of international comparisons, that other domestic regimes don't have similar measures, that this is going to have a serious net impact on investment in shipping in this country. We're then hearing from you that this is a mismatch of different attempts to cobble something together under tough environmental laws. I'm not sure what the theme is. We're now finding out before going to clause-by-clause next Tuesday that, in fact, it's incoherent.

What has to be done to correct the bill?

● (0935)

Mr. Christopher Giaschi: As for what has to be done to correct the bill, certainly there's Transport, and they are more concerned with the marine aspects. They are certainly very familiar with the marine legislation dealing with pollution. My guess is that if they become involved, they will be able to address some of these concerns.

Mr. David McGuinty: Transport would be able to correct the bill?

Mr. Christopher Giaschi: I would think they'd be able to address some of these concerns.

Mr. David McGuinty: And none of you were consulted by Transport?

Ms. Arsoniadis Stein.

Ms. Kaity Arsoniadis Stein: In terms of consultation from Transport, when I read about this bill in the paper, I immediately e-mailed the people from Transport who we work with and the director general at Environment Canada and his group. They were in London at the time for the IMO meetings. They e-mailed me back. They didn't know about this bill.

I spoke to them here yesterday, and they said, “Kaity, it was your letter that alerted us to the bill.” I was with the group in IMO at the MEPC 58 meetings back in October, and I can tell you that our Canadian Bill C-15 is raised on the international level.

I brought a few examples. I don't know if you'd like me to read from a circular.

The Vice-Chair (Mr. Francis Scarpaleggia): We have to move to Mr. Bigras, but I do have a question. Do you know who at Transport Canada? Can you tell us who at Transport Canada, or at what level, DG or ADM?

Ms. Kaity Arsoniadis Stein: The DG, and in addition to the DG, the people who work at IMO for Transport Canada.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

We'll now move on to Mr. Bigras.

[*Translation*]

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

This file has a very political component to it. We can indeed criticize the lack of consultation by the government, but once the bill is before committee, it is our responsibility as parliamentarians to study it. We may agree or disagree with the witnesses. That is why it is important, today, that we hear from both industry and workers affected by this issue.

I have read your briefs, and the prevailing point made in most of them is a request to the committee that amendments be tabled to restore the presumption of innocence. I think that this is quite important for both industry and the workers.

Have there been any Supreme Court rulings on the issue? There was this ruling made in 1978 involving Sault Ste. Marie, where the Supreme Court of Canada established a principle of strict liability in 1978. Since the adoption of the Canadian Charter of Rights and Freedoms, the Supreme Court has ruled that strict liability penalties do not violate the Charter, even if they can lead to a prison term.

The Supreme Court has already made a pronouncement with respect to strict liability. Consequently, strict liability does not mean a presumption of guilt.

You were right to refer to Bill C-15, but you could have also referred to Bill C-34. The wording of certain provisions in Bill C-15 lead us to believe that a judge could decide to absolve a ship's master, shipowner, chief engineer or director of any criminal liability provided that it could be shown that these individuals acted with due diligence. The acts therefore contain this principle of diligence.

As a last resort, the principle of diligence provided in Bill C-15 may enable you to demonstrate to the court that you have implemented the requisite measures.

I would like to hear your opinion on previous rulings of the Supreme Court and how such rulings could establish jurisprudence in the case before us. Should we not give consideration, as parliamentarians, to Supreme Court decisions when we examine bills? In all honesty, I am no lawyer. However, this does appear to be a legal argument.

● (0940)

[*English*]

Mr. Christopher Giaschi: First of all, I will say I am not a criminal lawyer; I am a maritime lawyer, so I don't deal with criminal courts.

The Sault Ste. Marie case you speak of is certainly a very well-known case that I remember from my law school days. But we're talking about something different here from that dealt with in Sault Ste. Marie. We're talking about pieces of legislation that have extremely large monetary penalties and that carry terms of imprisonment. This is a different creature from the standard quasi-criminal, strict liability sort of offence. Given the size of the penalties and because of the size of the penalties, the moral opprobrium that affixes itself to these kinds of offences really makes it much more in the character of a criminal offence than a quasi-criminal regulatory offence.

I think it's important to recognize too that internationally there is a very great deal of concern over the imposition of what are perceived to be unfair and unjust criminal sanctions against seafarers in respect to marine pollution incidents. Many of us are familiar with the *Prestige* incident, where the master was detained for...I think it was two years, and the *Hebei Spirit* in Korea, where the master and chief engineer are still being detained.

There's a real concern about this movement towards excessive penalties and imprisonment and imposing them automatically without really going through due process. It is almost as if we've forgotten the Magna Carta and all our history about due process and why it's important.

[*Translation*]

Mr. Bernard Bigras: You said that the bill provides for a minimum prison term. Is that accurate?

[*English*]

Mr. Christopher Giaschi: I'm not saying there are minimal penalties. I'm saying they are quite severe penalties in the bill.

[*Translation*]

Mr. Bernard Bigras: Very well.

I have no more questions, Mr. Chairman.

The Vice-Chair (Mr. Francis Scarpaleggia): Ms. Duncan, the floor is yours.

[*English*]

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

I also want to thank the three of you for coming to spend some time with me. I really appreciate it. I wish we could have had more time to outline your concerns. If it can give you any level of assurance, our committee will be going through all the amendments with the lawyers and the staff of the departments, and it will give us an opportunity to further examine them about inconsistencies in law and so forth. We need to hear more from you, so that we can then pursue these issues with the Department of Justice.

We did have a good discussion last night about your concern about absolute liability. I have to confess I'm still not convinced that what's happening is an absolute liability. I have noted that they have changed the two provisions. I do look forward to asking the government lawyers why they are now adding the "and"—the "master and the chief engineer".

I would like to ask this question, and anyone can answer it for me. What is the relationship on the ship between the master and the chief engineer?

● (0945)

Mr. Mark Boucher: The master is in command of the vessel and everything that goes on. The chief engineer is responsible for everything engineering-wise. The master has authority aboard the vessel.

Ms. Linda Duncan: What's the reporting relationship? Does the engineer have to do what the master says or vice versa? Do they take their command from somewhere else? I need to understand the relationship.

Mr. Mark Boucher: The chief engineer does enjoy a great deal of responsibility, authority, and autonomy, but answers to the captain.

Ms. Linda Duncan: The captain is the master?

Mr. Mark Boucher: That's right.

Ms. Linda Duncan: So the master is the captain of the vessel. That seems to be one of the main changes that you've raised that jump out at me. I certainly look forward to raising that with the department, about where the first part says the master or the chief engineer and then all of a sudden they are both liable. So I do look forward to asking that question.

I confess, despite your valiant efforts, and still I will raise the issue with the department.... I appreciate your briefing on UNCLOS and so forth, and I'm hopeful the department will give us a brief. Maybe our library experts could give us some kind of summary of the relationship between UNCLOS and the other international laws and the domestic law, which is the implementing mechanism, so that we can see what those provisions actually say and we can compare it to our law, because it's hard to come to a conclusion right off the bat.

One thing I'm finding trouble with and I'd like someone to—

Mr. Mark Boucher: One thing I wanted to add to what Mr. Giaschi said earlier is that it's important to note that not only do these conventions provide a limited liability, but they also specify who pays for the cleanup. It says that the seafarer does not pay for the cleanup, and it specifies who does. In the case of a convention vessel carrying a persistent or crude oil, that comes from a high deductible paid by the shipowner, first. The rest of the money comes from the international oil cleanup fund.

Ms. Linda Duncan: Maybe I could ask Mr. Giaschi whether there's a provision that if the fund is not sufficient, the domestic nation has the opportunity to seek further redress to recover the real cost of cleanup.

Mr. Christopher Giaschi: There are various fund levels. You go first to the ship that has a certificate of financial responsibility. It's backed by an international P and I club or an international insurance company. After that fund is exhausted, you go to the ship-source oil pollution fund, which is Canadian-based. After that fund is exhausted, you go to the international oil pollution compensation funds, and after that fund is exhausted, you go to the supplementary fund, which Canada is now implementing. I can't remember the exact numbers.

Ms. Linda Duncan: Is there no provision whatsoever that they can resort to their own domestic processes and laws?

Mr. Christopher Giaschi: You don't need to, because you have these funds available, and they go up to $290 million. It's a tremendous amount of money.

Ms. Linda Duncan: It's my understanding—and perhaps the parliamentary secretary, when he asks his questions, can clarify this—that there is another major marine liability bill soon coming before Parliament. It is, in fact, going to address this and implement the new international conventions on bills and so forth.

Mr. Christopher Giaschi: That's Bill C-7.

Ms. Linda Duncan: Okay. I can't speak for the mind of the government. Maybe they're going to be changing these laws twice over once that bill goes through. It's hard for us, as the opposition, to understand that, because we don't know the progression of all the laws that might change.

Mr. Christopher Giaschi: All Bill C-7 does is implement the international bunker convention. It implements the supplementary fund protocol and then modernizes some of the other aspects of the MLA in terms of the language of the ship-source oil pollution fund.

Ms. Linda Duncan: I have one further question to ask Mr. Boucher, if I have time.

When we met, I really appreciated that, and I'd love to have more time with you to discuss your issues, because they are peculiar to these statutes. I understand that some of you who work in this industry have a particular concern. When you add these provisions, and when the government is moving to more deregulation and self-inspection of the ships, there's a concern that you may not be able to raise these matters and be duly diligent. Would you like to speak to that?

● (0950)

Mr. Mark Boucher: Exactly. Our view is that deregulation, self-inspection, and self-regulation come to us from the aviation industry, which is also where the administrative monetary penalties have come from. We see this deregulation and self-inspection creeping into the marine industry. For reputable companies we're familiar with and comfortable with, that may be fine. On the regulatory side, that may be fine too. But we don't have that comfort factor with the less scrupulous companies that we know operate everywhere, placing the onus, the financial burden, and the fear of reprisal on the seafarer. Because it would be the seafarers doing the self-regulation and self-inspection, similar to the aviation side.

We haven't seen any analysis on the aviation side that it contributed to safety or environmental protection. It's gradually creeping in on the marine side. It's the thin edge of the wedge, as we see it. It's fine to introduce it with the large companies that are already well regulated and have an excellent, strong track record, but in the event that it gets expanded to these other notorious, less scrupulous outfits, we have strong concerns.

Ms. Linda Duncan: Thank you, Mr. Boucher.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

We're going to move on to Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you.

Because perhaps I am the only lawyer here on the government side, I'm just boiling over with questions.

I want to say off the top that my reading of the act and the amendments tells me that our justice department did an excellent job. They've covered off most, if not all, of the points that have been raised here this morning.

As soon as the bill was tabled, there was an e-mail that went out to as many stakeholders as the government was aware of. I don't know if anybody here missed it or if they were not on the list.

Mr. David McGuinty: Apparently the entire industry did.

Mr. Stephen Woodworth: I know the government has consulted with Transport Canada, so I don't have any complaint at all with the manner in which the government has proceeded.

This morning, I have to say, to put it politely, I've heard some legal propositions that are, at the very least, highly arguable, if not questionable—too many for me to try to address in the questioning time that I have. I am hoping that, at the very least, the committee will permit the government to make some written response to the legal or technical issues that have been raised here this morning, which are a little tough to get through in a seven-minute round of questioning.

That said, I'm happy Mr. Bigras pointed out that, in fact, “strict liability” does not mean there is no presumption of innocence. I'm happy Ms. Duncan pointed out that the provisions in this act are not absolute liability offences wherein prison would be problematic, but are strict liability offences wherein the Supreme Court of Canada has held that prison is not problematic.

I'd like to hit one or two things that I think are fairly simple. I'll begin with Mr. Giaschi on the issue of non-use value, which is found at clause 12, on page 19, proposed section 50.91, which I presume Mr. Giaschi is familiar with.

Do you remember from your law school days the old saw, *expressio unius est exclusio alterius*?

Mr. Christopher Giaschi: I'm familiar with the phrase.

Mr. Stephen Woodworth: It still holds water, to my knowledge. Do you agree?

Mr. Christopher Giaschi: Well, yes.

Mr. Stephen Woodworth: If one thing is expressed, it means other things are excluded, generally speaking, as a matter of interpretation.

Have you looked at proposed subsection 50.91(4) regarding non-use value? I'll read it to you:

> For the purposes of paragraphs (2)(a) and (b), "damage" includes loss of use value and non-use value.

That's the only place, at least in that constellation of amendments, that I can find "non-use value". Would you agree with me that it simply, in proposed paragraphs 50.91(2)(a) and (b), refers to aggravating factors on sentencing?

Are you familiar with that section?

● (0955)

Mr. Christopher Giaschi: Yes, I'm familiar with it in the sense that I've read it.

Mr. Stephen Woodworth: What I'm saying to you is that the "non-use value" in that section specifically and expressly refers only to the use of "non-use value" for aggravating factors and it doesn't go into compensation.

Mr. Christopher Giaschi: No, but when they're setting the fines, they can take those matters into account, and the fines would be—

Mr. Stephen Woodworth: Not by reason of this section, not by reason of anything in the proposed act.

The only place they can take non-use value into account by reason of the act is for the purpose of determining if there are aggravating factors, not for the purpose of determining compensation. If you could point out to me one place in this bill where it says that non-use value is a component of compensatory damages, you'd get a little further with me, but I have looked and I don't see it.

Can you point out to me any court decision that takes a provision on aggravating features and turns it into a compensatory order? Do you know of any such decision?

Mr. Christopher Giaschi: I don't think there is any legislation like this that does that.

Mr. Stephen Woodworth: That's right. So I have to say you haven't convinced me at all that non-use value is a factor in compensation.

I can understand why some international shippers may be a little wary if they're getting that kind of information. So would you kindly, on our behalf, take back to them that non-use value is not in this act as a compensatory issue, only an aggravating feature? If you'd tell them that, maybe they'll feel a little better.

Do I have another few minutes?

The Vice-Chair (Mr. Francis Scarpaleggia): Would Ms. Arsoniadis like to respond to that?

Ms. Kaity Arsoniadis Stein: Yes, just briefly.

Mr. Giaschi has not been retained on behalf of the International Ship-Owners Alliance or our community to speak on these issues. Our issues—

Mr. Stephen Woodworth: I thought he commented on them himself today.

Ms. Kaity Arsoniadis Stein: On behalf of CMLA, the Canadian Maritime Law Association.

Mr. Stephen Woodworth: Well, I'll put the same questions to you, then.

Ms. Kaity Arsoniadis Stein: Okay. I'd like to focus on the point of the presumption of innocence and the reverse onus.

Mr. Stephen Woodworth: I'm sorry, I was asking you about the non-use value issue that was raised. If you can tell me there's somewhere in this act that non-use value is used for the purpose of compensatory damages rather than being limited to determining if there are aggravating factors, I'd like to hear it.

Ms. Kaity Arsoniadis Stein: We don't have an issue with that at all. We don't even mention that in our submission.

Mr. Stephen Woodworth: That's why I wasn't asking you. I was asking Mr. Giaschi.

Do I have any more time?

The Vice-Chair (Mr. Francis Scarpaleggia): Yes, you do, but maybe we can move on.

Mr. Stephen Woodworth: Are you using my time?

The Vice-Chair (Mr. Francis Scarpaleggia): No, no, I'm not.

Mr. Stephen Woodworth: Then may I continue?

The Vice-Chair (Mr. Francis Scarpaleggia): Yes. However, I—

Mr. Stephen Woodworth: Thank you.

Then the next question—

The Vice-Chair (Mr. Francis Scarpaleggia): No, Mr. Woodworth. Are we going on to another point?

Mr. Stephen Woodworth: Yes.

The Vice-Chair (Mr. Francis Scarpaleggia): Are there any rebuttals to Mr. Woodworth on that particular point before we move on to maybe—

Mr. Mark Warawa (Langley, CPC): On a point of order, Chair, with all respect, this is Mr. Woodworth's time—

The Vice-Chair (Mr. Francis Scarpaleggia): So I will give him the time.

Mr. Mark Warawa: —so I don't think that for you to decide whether or not he should be using his time to hear rebuttals to his question is appropriate. It's his time. He should be able to use his time to stay on the topic he wants and question the people he wants.

The Vice-Chair (Mr. Francis Scarpaleggia): I have no problem with that. I just feel there might be a bit of confusion here, and before we move on—

Mr. Mark Warawa: I don't think there is any confusion, Chair.

Mr. Stephen Woodworth: I thought the witness answered my questions.

The Vice-Chair (Mr. Francis Scarpaleggia): Okay.

So the witnesses have nothing to add to that?

Ms. Kaity Arsoniadis Stein: I should apologize. I thought he wanted some sort of response to the strict liability/absolute liability charter point.

Mr. Stephen Woodworth: No, my questions were not about that.

The Vice-Chair (Mr. Francis Scarpaleggia): Okay, go on, Mr. Woodworth.

Mr. Stephen Woodworth: But I do have a question for Ms. Arsoniadis, and that relates to proposed section 20(2) that she referred to. I've forgotten the page number, but it's the section regarding the administrative procedures and administrative monetary penalties that allow for balance of probabilities rather than for proof beyond a reasonable doubt.

Actually, could you refer me to the page number, if you have it? If you don't, that's okay.

Ms. Kaity Arsoniadis Stein: Are you referencing the three letters that were sent, in the brief?

Mr. Stephen Woodworth: No, I'm referencing your comments this morning about proposed section 20(2).

Ms. Kaity Arsoniadis Stein: Just this morning? Yes, I didn't reference any sections.

● (1000)

Mr. Stephen Woodworth: Okay. Then let me just ask you this. Are you aware that the onus of proof as a balance of probabilities does not apply across the board in Bill C-16, but only applies to the administrative monetary penalties?

Ms. Kaity Arsoniadis Stein: Yes, I'm aware, and I think the way we'd like to put this forward is that with Bill C-16 raising the penalties now to $6 million, with aggravated to $12 million on a strict liability basis, we're not arguing about this increase in penalties.

Mr. Stephen Woodworth: No, I'm talking about the balance of probabilities issue you raised.

Ms. Kaity Arsoniadis Stein: And I'll get to that.

Our concern is that, given that we're increasing enforcement in that capacity and that we're allowing for very heavy fines, which—

Mr. Stephen Woodworth: Not under the administrative penalties.

Ms. Kaity Arsoniadis Stein: No, under the Bill C-16 enforcement provisions.

Mr. Stephen Woodworth: But you've said you're aware that the balance of probabilities does not apply across the board to Bill C-16.

Ms. Kaity Arsoniadis Stein: I think I'm confusing the question.

Mr. Stephen Woodworth: I think you are.

The Vice-Chair (Mr. Francis Scarpaleggia): Okay, so we're going to move on to Ms. Sgro.

Hon. Judy Sgro (York West, Lib.): Thank you very much.

I'm not a regular; I'm filling in for my colleague, who is in Vancouver this morning, so I'm coming in here cold on these issues, on both Bill C-15 and Bill C-16.

An hon. member: Well, you're welcome.

Hon. Judy Sgro: Yes, thanks. I guess there are a few others.

But regardless of that fact, I have to tell you that I am taken aback by the comments all of you have made on something this important to Canada and by the lack of consultation you're telling me has happened. You're talking about going to clause-by-clause and getting Transport in to answer. I mean, it seems to me we're so far down the pipeline to now hear from four individuals such as you, representing an important industry for Canada.

How could it be that you're coming to this table today at this point and juncture with this bill?

Mr. Mark Boucher: Well, we're accustomed to early and meaningful consultation. My group only deals with the marine transportation sector, so we have a narrow or specific focus. We are the go-to people; we're consulted on a regular basis by senior bureaucrats. Our position is that the input we've provided over many years on transportation legislation has been valued and has been worthwhile. It works both ways. The explanations provided to us during these discussions and consultations have given us a comfort factor in regard to very controversial proposed legislation being introduced right across the spectrum on the marine transportation side and, for me and Peter on the seafarer side specifically, the issues that impact seafarers in all of the different modes we represent.

Yet, in this case, consultation was much later in the game than some of my colleagues indicated. It was only in the last week or two that we became aware of this. We were only given the opportunity to appear here.... We found out about this the day before yesterday, which is great, as we had asked to appear and we're pleased to do so. But the consultation at the bureaucratic level in the government only took place yesterday. That would appear to be why we're behind the eight ball at this end of the table.

Ms. Kaity Arsoniadis Stein: If I may, when Bill C-15 became law on June 28, 2005, our group was very concerned. I was hired in July 2005. My mandate was that we had to work with government to try to encourage an amendment to what this bill brought about. Now, when I was hired, we had legal opinions telling us this was a constitutional problem. So we actually went out to get another three legal opinions to make sure we had it right. Subsequent to that, I have been working very closely with Environment Canada and Transport Canada, even as an adviser to the team at the IMO.

During our informal discussions on this issue—which is very important to us, and they are aware of that—they said, you know, Kaity, had you come to us back when you were at the Senate saying that the only change you wanted was to restore the presumption of innocence, and not a shopping list of other issues.... For example, environmental wildlife officers were to be making the arrests, and the industry was concerned that people who didn't understand the industry were to be on the other side, enforcing. So a stack of requests was put forward. They said, had you come with that one request, we probably could have done something.

We've been working with them for four years. So we are shocked at how this came about, without any knowledge on our part. They're telling us they had no knowledge of it as well. So we're here again today before you, asking for a single amendment or a single statement that the right to be presumed innocent will be put clearly into all nine pieces of legislation we are now standardizing.

Thank you.

● (1005)

Hon. Judy Sgro: I can't imagine this ever standing up to a constitutional challenge. This is Canada, for heaven's sake, and we do have this issue of presumption of innocence. This goes completely against that, it would seem to me.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

We're going to move now to Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

Thank you, to the witnesses, for being here.

I first want to deal with Bill C-15 back in 2005, which you mentioned. When Mr. McGuinty brought up the issue, I believe it was mentioned that there was limited consultation on that bill also. That was the bill dealing with birds polluted by oil at sea. It was during the 38th Parliament, and it became law in 2005.

Now, I'm sure you're aware that the due diligence provisions currently exist in CEPA and the Migratory Birds Convention Act. Are you aware of that?

I'm going to use your first name, Kaity, if that's okay.

Ms. Kaity Arsoniadis Stein: Kaity's fine, yes.

Mr. Mark Warawa: So are you aware that those provisions exist already?

Ms. Kaity Arsoniadis Stein: We're aware.

Mr. Mark Warawa: Did you submit your concerns that those provisions would be unconstitutional back in 2005?

Ms. Kaity Arsoniadis Stein: I think this came to fruition with the former Bill C-15, because the language in that bill amending the Migratory Birds Convention Act and CEPA was so absolutely specific to ships' captains and chief officers—basically those involved in shipping operations, directors, and officers of corporations. So it was very specifically aimed at that target group.

Mr. Mark Warawa: But that's not my question. Were your concerns that these provisions of due diligence were not constitutional expressed?

Ms. Kaity Arsoniadis Stein: I'd have to be honest that it was not something I turned my mind to look at.

Mr. Mark Warawa: Mr. Lahay, would you have a recollection of that?

Mr. Peter Lahay: That was part of our argument before the Senate Standing Committee on Energy, the Environment and Natural Resources.

Mr. Mark Warawa: Yes, correct. Thank you.

And so those concerns were raised back in 2005, and those are the same concerns, or similar concerns, that we're hearing today about the due diligence provisions.

Ms. Kaity Arsoniadis Stein: Right.

Mr. Mark Warawa: And is there a consistency there?

Ms. Kaity Arsoniadis Stein: There is a consistency.

Mr. Mark Warawa: Thank you.

Okay, my second question is that we've heard from you, Kaity, and others regarding unintentional actions or accidents, and briefs submitted to the committee seem to suggest that the statutes amended by the bill make it possible to convict shipping companies and individuals for accidents. The way I understand it, when a master or shipping authority can prove and demonstrate they've taken reasonable measures to ensure they do not contravene a law, they cannot be convicted of an offence. So if that's the case, how are they then left vulnerable to convictions for mere accidents?

Ms. Kaity Arsoniadis Stein: It's because of the way the language is put forward. It says the crown has to prove that the substance entered the water. So what the crown has to prove is that the act occurred. At that point, it captures a group of people who are now guilty until they can prove their due diligence.

So it doesn't include the *mens rea* in the first part of what the crown is proving; it's only the *actus reus*. Then we get the reverse onus situation, and the result is that this group of people is now considered guilty until they can prove their innocence. That's our concern.

● (1010)

Mr. Mark Warawa: So we have a hypothetical. If there's an illegal discharge from a ship, and we now know that somebody on that ship is guilty of an offence, there is reverse onus.

Ms. Kaity Arsoniadis Stein: If I may, there are instances in shipping operations where there could be a leak for some technical reason, and it doesn't necessarily mean that somebody has been guilty of doing something. It could have been a malfunction of equipment. In that case, it's not recognized in the legislation that is being put forward.

Mr. Mark Warawa: So if they can demonstrate that they've taken reasonable measures to ensure the law would not be contravened, they would not be found guilty.

Ms. Kaity Arsoniadis Stein: And that is where they have to hire their lawyers and go through the process in court to establish that they were duly diligent; but in essence, they're on the hook, and if for whatever reason they're not able to show their due diligence, they will have a criminal record and a term of imprisonment.

Mr. Mark Warawa: Do I have any time left?

The Vice-Chair (Mr. Francis Scarpaleggia): It's about 20 seconds.

Mr. Mark Warawa: Okay, I'm done then. Thank you.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you, Mr. Warawa.

Monsieur Ouellet, ou Monsieur Bigras.

[*Translation*]

Mr. Bernard Bigras: To tie into what Mr. Warawa was saying, it seems to me that there was a court decision for the case of Gulf of Georgia Towing Co. This was an example of the concept of due diligence being interpreted regarding an oil spill. It states:

> In this case, a judge decided that the test of due diligence would not be met simply by the company hiring careful people and telling them not to leave valves open, since inevitably people will make mistakes.

That is also what you said, Madam. However, the following was added as well:

> A spill would have serious consequences, and therefore the company would be required to take additional steps to prevent such a spill, such as in installing alarm systems or locking devices for valves.

It seems to me that a case has already been assessed, but that is not what my question was about.

My question was about the impact that such provisions may have on the seafarers themselves. I'm referring to section 13.15 of the Migratory Birds Convention Act of 1994, which states on page 145 that, under this provision, the master or chief engineer may be held liable for an offence committed by a person on board the vessel unless they can establish that they exercised due diligence to prevent the commission of the offence.

If an order is given by the master of the vessel to a worker who is aware of the situation and who feels that he cannot carry out an action that may have an impact on the environment and, as a result, make him guilty of an offence, would that not cause an internal problem?

If the order is given by the captain and the front-line worker on the vessel decides to carry out the boss's order, does the worker not risk being found guilty of an offence whereas the responsibility, on the vessel, lies with the captain?

Are we not accusing the front-line worker, whereas decisions must be made on the vessel, and be determined by the corporation?

[*English*]

Mr. Peter Lahay: Life on a ship is very complicated. There are all kinds of different procedures, operational procedures, company procedures, technical machinery, interpersonal relationships, levels of competency, all of those sorts of things. All of them will then interrelate. The proficiency of a crew will relate up and down the chain in terms of the performance of the safety of that ship. These are ships that are coming into Canada on a daily basis supplying our international trade and carrying out the commerce of Canada abroad and nationally.

I'm not a lawyer. I take very seriously the concerns that the government has, and Justice.

Mr. Woodworth, I couldn't begin to address your comments, I don't even understand what they are. But I do understand how life on board a ship works. I can tell you that there could be an accident. A crew could do something in error or even intentionally that would affect the captain and the chief engineer. Because we're talking about ships.... Foreign-going ships have 24 or 25 crew members on board them. Domestic ships usually have something less—a tugboat has five or six, or even three or four sometimes—so it's easier to manage the risks. The more people who are involved, the more complex a vessel, the higher the inherent risks. If a crewman has to defend such a thing.... Because it's one thing if the captain can show due diligence; it's the position of the government that he will be found innocent ultimately. But our problem is that he might have to pay $500,000 in legal costs, and that person has lost his house, he's lost his entire life. We think that it's targeting the wrong thing.

Maybe Mr. Giaschi would like to pick up on this somewhere along the line. We always refer to ships as “she”, and it's because we give ships a persona as a person. Ships are arrestable, so if there's a violation against a ship in the conduct of its carriage of cargo, then we go after the ship. This has changed all of that around, at least on marine pollution. In many other laws, I think if there was a bankruptcy case and somebody owed somebody money for fuel, or for provisions or stores, or crews' wages, or anything like that, we're not looking at reverse onus or anything like that; we're looking at real law, where people have to prove their case and make their case.

That's kind of the perspective. We see it from a reality point of view as workers on the front line facing this bill. I've got a couple of kids, and I can tell you I'm not allowing them to be seafarers—unless they resist their father. It's ridiculous. If a young person has any talent at all, they should probably not go into this industry. At the same time, Human Resources and Skills Development in this country is just starting a sectoral council because we recognize that our mean age for ratings and officers in this country is probably something like about 53 or 55 years old, just like the demographics across many things. Our ships are now already stopping because of lack of crew. We cannot in good conscience recommend the crew go back or train up to work on these ships in view of the present risks and the inherent increased risks.

● (1015)

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you, Mr. Lahay. I can assure you this committee has no intention of creating any family problems for anyone.

We'll move on to Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair.

I certainly appreciate the commentary that I'm hearing today. It's certainly good to get the perspective of the industry.

In the question I have—and this is to all members who are here—the line of questioning I'm going to go down is on aquatic invasive species. If you go the Department of Fisheries and Oceans website, it says here:

> Aquatic invasive species (AIS) have already been responsible for significant devastation of some native fish species and fisheries in Canada. Annually, the problem is responsible for billions of dollars in lost revenue and control measures. Canada, with its huge freshwater resource and extensive coastline, is especially vulnerable to this threat.

If you go down and take a look at the number of aquatic invasive species that are listed on there, sea lampreys are credited with being introduced into the Great Lake regions through ballast waters, and zebra mussels in the Great Lakes area are attributed to ballast water. In your knowledge, has anybody in the industry ever been held to account for the introduction of some of these aquatic invasive species? We can talk about green crabs, we can talk about club tunicates, we can talk about the Japanese oyster, we can talk about round gobies in the Great Lakes, and the rusty crayfish, and the list goes on. Has anybody ever, through the legislation, whether it's the environmental legislation or a transfer legislation, or whether it's through the Canada Shipping Act, been held to account for the millions of dollars of devastation that aquatic invasive species have caused?

I'd like to hear your comments on that.

Mr. Christopher Giaschi: I think the difficulty has always been, and still is, to track back to who it was who introduced a particular species into the water. I think the answer is no, but there have been many individual cases where ships were found to have brought some sort of species with them that they shouldn't have, and where they've certainly been forced to account in terms of returning and cleaning up any contamination that might have occurred as a result.

● (1020)

Mr. Blaine Calkins: Other than the enforcement provisions, which are being strengthened through the proposed legislation and amendments through Bill C-16, is there anything the industry could do to bring an added level of comfort to anybody sitting around this table that they're taking matters into their own hands to make sure this problem doesn't exist, so the enforcement route doesn't have to be used?

Ms. Kaity Arsoniadis Stein: I can assure you that this issue is very high on the agenda globally. At the IMO, we agreed on a convention in October, with enforcement very shortly. We have working groups on this, not only at the IMO level but through every seafaring nation. It is at the top on the agenda, it is a serious issue—we do not disagree. And there are measures and things that are being done in a very progressive manner.

Mr. Blaine Calkins: Go ahead. I'm not going to cut you off if you have more to add.

Ms. Kaity Arsoniadis Stein: Further on that, we're not denying, we agree. The polluter has to pay. We do not take issue with that. If there is a pollution, it should be paid for. If it's a $6 million fine or a $12 million fine, we do support that. We are not here to challenge that proposition. The polluter has to pay.

Mr. Blaine Calkins: My argument then, coming from a law enforcement background, is obviously having enough tools and having enough enforcement capability. The answer is that nobody has been caught and nobody has been charged. I would submit to you that the challenge with this is that the laws, being what they are and being what they're being changed to, may actually provide law enforcement officials with a little more flexibility when it comes to actually bringing somebody to justice.

If the industry is serious about this, which you say you are, then I don't understand some of the issues with the provision of the changes that we have in this legislation. If you want the guilty people to be caught, brought to justice, and held accountable for some of these things, which I think most Canadians would agree are very serious matters, then the law enforcement agency has to have mechanisms available to make sure that they can, first of all, stop something from happening. Obviously ships can be brought in, we can stop the conveyance, we can bring them in, but there also have to be mechanisms that allow law enforcement officers to be able to do their job and get this before a court.

Ms. Kaity Arsoniadis Stein: We don't deny that. The fact that there is strict liability with massive penalties attached to it is one thing, but strict liability for imprisonment is another. So we're hoping it satisfies our parliamentarians that strict liability with massive fines will satisfy the concern, and that we allow the rule of law and the right to be presumed innocent to be applied to the seafarers and the people, and that we don't use strict liability for the criminal aspect of imprisonment.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

We now have to move on to Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair.

I'll start with a few questions touching on a variety of issues, and if I have any additional time, I may provide it to Mr. Woodworth.

Starting with the issue of the consultation process, do any of you recall, during the election campaign in which our government announced commitment to a much stronger environmental enforcement regime—that was made with a fair bit of attention—

Ms. Kaity Arsoniadis Stein: Yes, I do.

Mr. Peter Braid: Yes, okay. Good.

Secondly, I think we all agree around the table that a very obvious principle of our justice system in Canada is the presumption of innocence. None of us disagree with that. What makes you think that our process or our courts would throw that principle out of the window?

Ms. Kaity Arsoniadis Stein: I don't think our courts would throw that principle out the window. In fact, I think they hold it as probably the most fundamental principle, as do we as Canadians. That's why we're here today.

We have one case, the Wholesale Travel case, which is post-charter, that was decided on this issue. The Wholesale Travel case allowed for this situation.

I'd like to look at the Wholesale Travel case in a little more detail. When I read it in further detail and read all the opinions that experts in constitutional and criminal law have provided us with, I can see that it is a decision that is very divided. It's a 5-6 decision on this issue. The actual facts are very specific—and very specific to an individual—and targeted.

I have to say that when I read Chief Justice Beverley McLachlin's statement in that case, I take comfort that in Canada we would not throw out the presumption of innocence. But we don't want to have to get to the point at which we have a seafarer, in order to defend himself, ending up running through the courts to the Supreme Court of Canada with $1 million of legal fines behind him. When I see and read Chief Justice Beverley McLachlin saying that the penalty for imprisonment cannot, without violating the guarantees in the charter, be combined with an offence that permits conviction, I take comfort.

● (1025)

Mr. Peter Braid: On the other hand, I think I heard you say that you support the increased fines that are present in this legislation.

Ms. Kaity Arsoniadis Stein: We do not take issue with that at all.

Mr. Peter Braid: Okay.

I want to understand further the concern with respect to the civil test of balance of probability being applied, as opposed to the higher, criminal "beyond a reasonable doubt" test. Given that this particular aspect of Bill C-16—and this is where Mr. Woodworth was going—is restricted only to the administrative monetary penalty component of the act, I want to ask you to clarify, if you would, why you think this would affect the burden of proof in the prosecution of offences, given that this test only applies to the AMP component.

Ms. Kaity Arsoniadis Stein: I'm sorry; I'm a little confused. That has to do with the fine. We don't take issue with the fine; we have no problem with it. We support the penalty provisions and we think the polluter should pay. We have no problem with that.

Mr. Peter Braid: Perhaps it was Mr. Boucher who touched on this.

Mr. Mark Boucher: Mr. Woodworth asked earlier what page it was on; it's on page 186. And the point that Kaity raised earlier is found on page 186. She raised the point that the minister "has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed" the offence. As was stated earlier, if one thing is expressed, the rest is excluded. I'd leave the comment on that to my legal friends.

You're right that it's solely in the administrative monetary penalties portion of the bill. That's the new statute; the rest is amendments to nine other statutes. That is the sole place in which it appears.

The Vice-Chair (Mr. Francis Scarpaleggia): Mr. Watson, please.

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

I thank our witnesses for appearing.

As a lead-off question, I would ask you this. How many other statutes are you aware of that have an explicit section articulating presumption of innocence? You're asking for something to be explicitly put in here with respect to a presumption of innocence. I'm not aware that such a provision exists in any other statute. Am I missing something?

I'll take that as a no and move on to the next question. But it's because it exists in the common law, I believe.

Our international conventions, to which you referred earlier—I believe it was the Maritime Law Association who raised the issue in their brief—are with respect to oil pollution damage. Are there any other kinds of pollution that can be caused by ships? You also mentioned the bunkers convention, which would be for the leak of bunker oil, but are there any other types of pollution that can be caused by ships?

● (1030)

Mr. Christopher Giaschi: Pretty much all we see is oil. Of course, theoretically you certainly could have—

Mr. Jeff Watson: What else could there be?

Mr. Christopher Giaschi: I suppose there could be anything else that a ship carries and dumps. We had canola oil in Vancouver, which was considered a pollutant.

Mr. Jeff Watson: In 2005 I raised a question to the then Liberal government with respect to the reports of the practices of Canada Steamship Lines with respect to cargo sweeping. That is the discharge of remaining iron ore pellets into the Great Lakes. Is that another potential source of pollution?

Mr. Christopher Giaschi: I don't know about iron ore pellets, but it could certainly be any other type of cargo like that. But that's not supposed to happen.

Mr. Jeff Watson: Fair enough, but any other type of cargo discharged, if you will, that could pollute is not caught up under our international conventions. Is that correct?

Mr. Christopher Giaschi: No, it doesn't affect the fact that most of the pollution is oil, and that's what those conventions deal with. There's also the hazardous and noxious substances convention, which is being worked on.

The Vice-Chair (Mr. Francis Scarpaleggia): Do you have more questions? Do you want to go on?

Mr. Jeff Watson: Thank you very much. I'll split my time with Mr. Woodworth.

Mr. Stephen Woodworth: First of all, I will make a quick apology. I was so interested in asking my questions quickly and so interested in some of what I thought were questionable points that I think I may have been a little too vigorous earlier. I do apologize for that; I didn't mean to be.

Getting back to the AMPs, Mr. Boucher, are you familiar with the Canada Shipping Act?

Mr. Mark Boucher: Yes.

Mr. Stephen Woodworth: Are you familiar with the fact that the Canada Shipping Act contains an AMPs procedure?

Mr. Mark Boucher: Yes.

Mr. Stephen Woodworth: Are you familiar with the fact that the AMPs procedure in the Canada Shipping Act is also based on a balance of probabilities onus of proof?

Mr. Mark Boucher: Absolutely.

Mr. Mark Boucher: This is recent legislation, recent regulations on administrate monetary penalties for violations of the Canada Shipping Act. We're not aware of any so far. We're watching it closely and are very concerned about it.

Ms. Kaity Arsoniadis Stein: I don't think those involved in the operations of ships should not have the right to be presumed innocent until proven guilty. I think strict liability for imprisonment should not be there.

Mr. Stephen Woodworth: So if we can prove that somebody discharged pollutants into water, do you think they should be subject to potential prison sentences?

Ms. Kaity Arsoniadis Stein: I think they can be made available, yes, so long as the presumption of innocence is in place. That's our concern.

Mr. Stephen Woodworth: With respect, I think that all of the strict liability offences in which due diligence is a defence still require the crown to prove that the offence has been committed. But they can't require the crown to prove due diligence or lack thereof, because that information is in the possession of the accused only. Do you understand what I mean by that?

Ms. Kaity Arsoniadis Stein: I do, and I really think that all the crown has to show is that the substance entered the water. That's it.

Mr. Stephen Woodworth: That's right.

Ms. Kaity Arsoniadis Stein: And that's not enough in our free and democratic society, where our charter, at section 11, strongly puts into our Canadian country that we have the right to be presumed innocent.

Mr. Stephen Woodworth: I'll disagree with you a little bit. Don't you think the crown also has to prove that a particular vessel was responsible for the substance entering the water?

Ms. Kaity Arsoniadis Stein: Now we're talking about the *actus reus* and the *mens rea*. I'd like to see the crown prove the *mens rea* before we have the imprisonment attached.

Mr. Stephen Woodworth: If I'm out of time, I'll try to come back to it.

The Vice-Chair (Mr. Francis Scarpaleggia): You are out of time, but I gave you a little extra time because it was an interesting point.

Mr. Storseth.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair. I'll just cede my time to Mr. Woodworth.

Mr. Stephen Woodworth: Thank you.

In fact, do you realize or accept that *mens rea* is a legal requirement that is satisfied if someone has acted negligently or in some cases even carelessly?

● (1035)

Ms. Kaity Arsoniadis Stein: If that can be shown, I don't have a problem with that.

Mr. Stephen Woodworth: So, for example, if someone's charged with careless driving, you're okay with the possibility that they might get prison?

Ms. Kaity Arsoniadis Stein: Well, I think it's hard to look at examples and pull them out of the air. I look at a murderer, for example, who may have the smoking gun in hand, and he's still afforded the right to be presumed innocent until proven guilty.

Mr. Stephen Woodworth: That's right, but if he has negligently killed someone, he'll be convicted, won't he?

Ms. Kaity Arsoniadis Stein: He will, and—

Mr. Stephen Woodworth: Unless he can prove—

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, now is not the time to extrapolate. It is important that we focus on Bill C-16, and, although Mr. Woodworth is asking some very relevant questions, with all due respect to him, they do go beyond the scope of our study pertaining to this bill.

Mr. Stephen Woodworth: All right.

[*English*]

I agree, I'll move on to something else and if I may, I'll return to Mr.—

[*Translation*]

The Vice-Chair (Mr. Francis Scarpaleggia): Would you please go through the chair.

Mr. Bernard Bigras: That's what I said. I started by saying “Mr. Chairman”. I wasn't addressing Mr. Woodworth.

An Hon. Member: No, no, not at all.

Mr. Bernard Bigras: Moreover, I do not think that he interpreted this as a personal remark.

The Vice-Chair (Mr. Francis Scarpaleggia): All right. We will continue. There's no problem.

[*English*]

Mr. Stephen Woodworth: I agree, Mr. Chair, with Mr. Bigras' comments. I'll move on.

I'd like to ask Mr. Giaschi about the UNCLOS situation. I will start with the Canada Shipping Act.

Are you aware of any difficulties that have arisen in relation to offences under the Canada Shipping Act under the UNCLOS regime?

Mr. Christopher Giaschi: No, but I don't know whether the issue has ever been raised under the Canada Shipping Act.

Mr. Stephen Woodworth: In fact, you're not aware of any prison sentences for foreign vessels that have been imposed under the Canada Shipping Act, are you?

Mr. Christopher Giaschi: I'm not aware of any prison sentences that have ever been imposed under the Canada Shipping Act.

Mr. Stephen Woodworth: Are you aware that it's prosecution policy not to request prison sentences under the Canada Shipping Act where to do so would violate UNCLOS?

Mr. Christopher Giaschi: It may be policy, but that doesn't address the conflicting legislation.

Mr. Stephen Woodworth: Well, in fact, if there is a policy that prosecutors are directed not to seek sentences that would contravene UNCLOS under the Canada Shipping Act, that seems to have worked, hasn't it?

Mr. Christopher Giaschi: Has it worked? Perhaps. But as I say, I don't think there has ever been any imprisonment under the Canada Shipping Act. Are you saying that if this bill is passed, we're going to have the same policy? That's kind of the problem, I guess, in that we don't know whether that will be a policy in that way and that it will be enforced.

Mr. Stephen Woodworth: I think probably you can count on it.

Mr. Christopher Giaschi: Well, that might be an answer, but it's kind of an odd way to go about it. Why pass a piece of legislation that you know you can't...? You're going to pass a policy that says you're not going to enforce it.

Mr. Stephen Woodworth: No. The answer is that the legislation applies to all shipping, whereas UNCLOS applies only to foreign shipping, and consequently the prosecutorial policy will deal with the foreign shipping. I'm glad that will satisfy that point, and I'd like to—

Mr. Christopher Giaschi: Normally that's done by way of wording in the legislation that defines “foreign vessel” or whatever. That's the way it's done in—

Mr. Stephen Woodworth: Can you point to that provision in the Canada Shipping Act for me, then?

Mr. Christopher Giaschi: The one that defines “foreign vessel”?

Mr. Stephen Woodworth: The one that addresses it in the manner that you just suggested it's normally addressed in.

Mr. Christopher Giaschi: We know. We've already established that's not the way it's done in the Canada Shipping Act. That doesn't mean they did it right in the Canada Shipping Act.

Mr. Stephen Woodworth: No, but it perhaps means—

Mr. Christopher Giaschi: Clearly, they did it wrong, because they had to correct it by implementing a policy.

Mr. Stephen Woodworth: No, perhaps it means that's the way it's normally done, as it is in the Canada Shipping Act.

Mr. Christopher Giaschi: Well, normal.... You have one act where what really happened is that they overlooked the problem and then they implemented the policy.

Mr. Stephen Woodworth: If I could go back to your point regarding the Marine Liability Act, as I understand it, you're concerned that some of the provisions in Bill C-16 regarding compensation or cleanup orders may conflict with international conventions. Is that a correct statement of your concern?

Mr. Christopher Giaschi: Yes, very broadly.

The Vice-Chair (Mr. Francis Scarpaleggia): Our time is up. We may have time for a shorter third round of, I don't know, three minutes, but obviously it's up to the committee. What about three-minute rounds, and three minutes per party, of course? Is that good?

An hon. member: Four minutes?

The Vice-Chair (Mr. Francis Scarpaleggia): Let's do four minutes, but that takes us right to the end.

Mr. McGuinty.

● (1040)

Mr. David McGuinty: Thanks very much, Chair.

I need to hear more from you, if I could, on these really important questions and points that were made. I think it was Monsieur Boucher who said he was fearful that the concept or the notion of self-regulation was migrating from the transport sector to the marine sector, the shipping sector.

Mr. Lahay, I think you've talked about the difficulty of attracting new blood into the industry.

Ms. Arsoniadis, you talked about the problems now that might flow as a result of this new liability regime in attracting new investment in the shipping industry.

It's interesting, because I need to place this a little bit in context.

The government recently announced that it was doing away with environmental assessment in Canada for any projects worth less than $10 million. It did so without bringing it to this committee, for example, but the principal rationale, in fact the only rationale, was that it was going to have a nefarious effect on the economy and the ability of the government to put stimulus money out the door; it was an impediment.

Now we have a situation where the government is proposing legislation that, hearing from you, is going to have a nefarious effect on business and investment. Can you help us understand better what this would do on investment, new blood, liability insurance coverage, and directors' and officers' liability, and will it benefit foreign shippers?

Ms. Kaity Arsoniadis Stein: Why don't I start here? I can tell you that right now the international community is watching the Bill C-16 developments very closely. Right now, our global economy is really suffering. Canada has fared pretty well. Our banks are doing better than most banks globally and have an excellent track record, so there is a revived interest in Canada for investment.

Internationally, on the concerns with what Bill C-15 did, a lot of companies, blue-chip, great companies that are currently here, did risk assessments to see whether they should remain in Canada or do they owe it to their employees and shareholders to go to a less hostile environment? We did see downsizing, and we do know directly of two companies that were waiting to hear what would have happened with the result of Bill C-15. When Bill C-15 became law, these two companies went to Singapore. That's a fact, and we've heard of others.

The international shipping community is a small community and the links are tremendous. For example, the chair of ISAC is also the vice-chair at the International Chamber of Shipping. He's the vice-chair of the London Club, one of the largest P and I clubs in the world. He works with the Magsaysay Group. It is his company. They employ the biggest chunk of world seafarers globally. The connections go on and on. It's a small community.

One of our trading partners for Canada is Asia, and I can read here the Asian Shipowners' Forum joint statement: “The meeting was attended by 119 delegates from the Shipowner Associations of Australia, China, Chinese Taipei, Hong Kong, Japan, Korea...”. At page 12, they highlight the Canadian Migratory Birds Act. I'll read from the statement: “The Forum noted the amendments to the Canadian Migratory Birds Act (1999) made by the adoption of Bill C-15 and continues to support the concerns expressed by the Canadian shipowners.”

The Vice-Chair (Mr. Francis Scarpaleggia): We're going to have to move on. We have limited time. But I think you made your point.

Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: In your testimony, a few minutes ago, you referred to a 1991 Supreme Court ruling on Wholesale Travel Group Inc. At that time, the Supreme Court had ruled that: “the availability of imprisonment does not alter the conclusion that strict liability does not violate the Charter.” You did not refer to this ruling even once.

Am I to understand that, in your opinion, this ruling does not apply to the case before us?

● (1045)

[*English*]

Ms. Kaity Arsoniadis Stein: I'm sorry, can you rephrase the part about the jail penalties?

[*Translation*]

Mr. Bernard Bigras: With respect to strict liability, the Supreme Court rendered a decision in the Wholesale Travel Group Inc. case. It clearly ruled that the availability of imprisonment did not alter the conclusion that strict liability does not violate the Charter.

I would therefore like to know whether, in your opinion, this Supreme Court decision should be taken into consideration as part of our discussion on Bill C-16.

[*English*]

Ms. Kaity Arsoniadis Stein: It is a very important and complex case that requires in-depth analysis. I don't know the number off the top of my head, but while most judges said it was a breach of the Constitution, it was saved under section 1 of the charter. So the saving provision of section 1 allowed the case to be decided as it was. But I stress again that it's a very complex case. There was a five-to-six split. By no means was that a majority decision out of our Supreme Court.

In deep analysis of this case, when you take the individual facts into consideration—and I think that's what needs to be considered—and juxtapose them with what we have here today, our legal advisers have said it will be unconstitutional. I can read from Simon Potter's legal opinion and Alan Gold's legal opinion, but I'll stop there.

[*Translation*]

Mr. Bernard Bigras: My understanding of that decision is that strict liability does not mean that there is presumption of guilt. I know Mr. Woodworth to be an excellent lawyer. He believes that Justice Canada has done excellent work.

However, we must know what Justice Canada officials based their work on in order to, among other things, advise the department. In light of the testimony we have heard, whether we approve of it or not—that remains to be determined—it seems to me that Justice Canada should come to explain their position. That is the very least they could do.

I am somewhat surprised. In fact, during the testimony by their officials, Justice Canada remained silent on that issue, perhaps because the government has not consulted enough, and it had not seen what the industry and its workers were proposing.

Nevertheless, Mr. Chair, it seems to me that Justice Canada officials should come back before the committee to explain a number of legal issues.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

I have a question. Will Justice Canada officials attend our clause-by-clause meetings?

Mr. Bernard Bigras: I knew that Justice Canada officials would be in attendance.

That is not the point. The point is whether we, as parliamentarians, should be prepared to table amendments. Once our committee and Justice Canada proceed to clause-by-clause consideration, it will no longer be appropriate for us to ask questions. Justice Canada has to provide some explanation concerning a number of legal provisions.

Mr. Chair, it seems to me that we are now dealing with the matter in depth.

The Vice-Chair (Mr. Francis Scarpaleggia): Very well.

I will come back to that later.

Mr. Hyer, you have four minutes.

[*English*]

Mr. Bruce Hyer (Thunder Bay—Superior North, NDP): Thank you.

My question is for either Mr. Boucher or Mr. Lahay, or both.

I apologize for coming in late, and I'm sorry if I'm asking questions that have already been asked.

How will deregulation affect not only Canadian shipping in general but Canadian workers? Educate me on how this bill has the potential to damage or help Canadian workers in the shipping industry.

● (1050)

Mr. Peter Lahay: I think the Government of Canada knows that trade unions in this country are pretty much always opposed to any sort of deregulation. One of the things we are seeing is not just the deregulation itself, it's being combined with something else, and that is a lack of enforcement. We see that the total responsibility of the governance of a particular industry, be it our field or other sectors, including maybe even—it's been very controversial—the meat inspection industry, for example.... We have increased problems.

The catastrophe doesn't happen because of one event. It happens because of generally a chain of events, just as I was describing the interrelationships and the complexities of operating a ship. One thing doesn't normally lead to a big problem; it's a chain of events. I'm straying off topic here, but it is another point that we're awfully concerned about, the lack of enforcement of the regulations of our country as workers. We think workers are being put at the pointy end of the stick here and put in jeopardy in a whole range of manners.

We are here today mostly to address being bankrupted by court proceedings. That's our primary role in wanting to express to our government, our parliamentarians, for whom we have the greatest respect. We look to you for leadership. We also look to the bureaucracy of our government to work with us so that we can work together and provide the national security, provide that this ballast water isn't discharged. We do those things as an organization on oily water waste. We've produced pamphlets and we've been distributing them globally.

There are a lot of things we do where we meet our responsibility and exceed our responsibility. Sometimes we just feel a little bit let down by our regulators.

I'm sorry, Mr. Hyer, if that's a little off topic.

Mr. Bruce Hyer: Do you want to add anything, Mr. Boucher?

Mr. Mark Boucher: I just want to say that this is new to our industry: deregulation, self-regulation, and self-inspection. We're monitoring it carefully because we have a fear of financial pressures being placed on the seafarer to do self-inspection, self-regulation aboard their own vessels, at the senior levels. The financial pressures will be there, and so will fear of reprisals and all the things that go along with that. There has probably been a steep learning curve in other industries that have it already.

The guild has hired lawyers and staff to work for us on a full-time basis from coast to coast in order to carefully monitor that particular situation, to meet with all the appropriate people, and to watch it unfold, because it's coming into place whether we like it or not. It's being introduced. It's starting now on the west coast, and we'll see how that unfolds as it expands.

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you, Mr. Hyer.

We'll now go to Mr. Warawa for the last four minutes, and then I'd like to revisit the point Mr. Bigras raised, which is whether we should invite Justice Canada to be here at the start of the next meeting maybe for half an hour before we start the clause-by-clause. I'll ask for your opinions on that.

Mr. Warawa, please.

Mr. Mark Warawa: Thank you. I just want to again make the point that due diligence provisions currently exist in CEPA.

During the 2005 interventions the witnesses have been consistent in their position that they believe they were non-constitutional, but they are indeed constitutional. The other point I wanted to make is that BillC-16 deals with nine different statutes, not just shipping. The effects will not be just on shipping, but right across Canada there will be a higher degree of environmental enforcement. I'm just commenting on Mr. Boucher's concerns that his children maybe shouldn't be in seafaring, or Mr. Lahay, that these statutes are Canada-wide, not just shipping. It sounds to me that shipping wants to be exempt, but the rest of Canada will have to deal with these tougher regulations and tougher enforcements.

I believe we need to have consistency right across our country, including shipping. We do not look at the worst-case scenario, because the worst-case scenario does not apply, or rarely. We need to have good environmental enforcement.

The few minutes that I have left I'd like to pass on to Mr. Woodworth.

● (1055)

Mr. Stephen Woodworth: I'm quite interested in the Ship-Owners Alliance's comments about how Canadian environmental laws are scaring away shipowners, which is the gist of what I get from that. To tell you the truth, I don't want to discourage corporate ownership in Canada, but I'm not sure it's a bad thing if Canadian and environmental enforcement is leading the world and at such a high quality that it's putting the fear of the law into shipowners.

Are you saying that shipowners are not going to ship through Canadian waters because our environmental enforcement standards under our government are so high?

Ms. Kaity Arsoniadis Stein: I'm not saying that full out, but I'm certain that considerations will be made whether a vessel sailing from the east will check into the port of Vancouver. We now have the widening of the Panama Canal. It could be that these larger vessels will just do the whole journey, instead of into Vancouver and then railing it to the east, so I can't speak in uncertain terms.

The clause we're asking for isn't specific to the shipping legislation; all nine pieces of legislation are tabled. So we are asking for consistency, no exceptions.

Mr. Stephen Woodworth: Sure.

I just wanted to make sure I understand. You are saying that because our environmental enforcement standards are so high, there may be shippers who don't ship through Canadian waters. That's what you're saying, is it?

Ms. Kaity Arsoniadis Stein: I'm not saying our environmental standards are so high; I'm saying it's good to have excellent enforcement. We should definitely keep our principle: polluter pays. We should remain with the strict liability for very high penalties. But where it comes to imprisonment, we should abide by our rule of law and uphold our constitutional guarantees.

Mr. Stephen Woodworth: It's just unclear to me—

The Vice-Chair (Mr. Francis Scarpaleggia): Thank you.

Mr. Stephen Woodworth: I'm out of time? Thank you.

The Vice-Chair (Mr. Francis Scarpaleggia): I'd like to thank our witnesses for being here today. It was, I thought, an extremely interesting discussion. And judging from Mr. Bigras' comment, maybe we'd better take a little extra time to look at this in greater detail.

Thanks for coming. It was very helpful to our committee.

If the members would stay for a couple more minutes, we're going to proceed.

[*Translation*]

Should we go in camera?

Mr. Bernard Bigras: I do not think we need to go in camera.

However, without having to judge the arguments that were presented to us today, it seems to me that Justice Canada should come to respond to those arguments. I am not asking for an in-depth study, but I believe that parliamentarians need to have all the facts and at least have Justice Canada come and give us their opinion— and I presume that Justice Canada already has copies of the briefs that have been presented.

The Vice-Chair (Mr. Francis Scarpaleggia): Therefore, we will invite—

[*English*]

Before I get to you, Mr. Warawa, are we in agreement that we invite Justice Canada to open our next meeting with maybe a half-hour presentation with questions before we start clause-by-clause? Because we won't have any other witnesses coming, we can take our time to ask the questions we need to ask of Justice Canada.

Mr. Warawa.

Mr. Mark Warawa: Chair, if we're allowing 30 minutes to hear from the officials from Environment Canada or Justice Canada so we can ask them some questions, I think you'd find consensus for that.

We're talking Tuesday of next week. If they could provide us with some written material we can read over the weekend so we are ready for the meeting on Tuesday, we can then efficiently move on to clause-by-clause. So consensus, I think, is for the first half-hour of next Tuesday.

● (1100)

[*Translation*]

Mr. Bernard Bigras: And that the clerk make it clear to Justice Canada that its brief must deal with the elements that were presented to us today, in order to stay on topic.

[*English*]

The Vice-Chair (Mr. Francis Scarpaleggia): Yes, go ahead.

Mr. Mark Warawa: Chair, before you bang the gavel, the other issue I'd like us to discuss is a report on our travel expenses. I've had a concern raised about the cost of the helicopters, and perhaps we could review that. Apparently the estimate is somewhere around $13,000 or $14,000.

The Vice-Chair (Mr. Francis Scarpaleggia): Okay, if the committee is in agreement, I would proposed that we have a short in camera session to discuss that, then have Justice Canada and Environment Canada in for half an hour or 45 minutes, and then, if we have time, start clause-by-clause on Tuesday.

An hon. member: That sounds fine.

The Vice-Chair (Mr. Francis Scarpaleggia): Okay, if there's nothing else, would anyone like to propose a motion to adjourn?

Thank you. It's agreed. The meeting is adjourned.

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