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Chair

Mr. Merv Tweed

Standing Committee on Transport, Infrastructure and Communities

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● (1530)

[*English*]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities. This is meeting number 13. The orders of the day are that pursuant to the order of reference of Monday, March 30, 2009, we are considering Bill C-7, An Act to amend the Marine Liability Act and the Federal Courts Act and to make consequential amendments to other Acts.

Joining us today from the Canadian Shipowners Association is Mr. Bruce Bowie, president. Joining us from the Canadian Bar Association are Mr. Simon Barker, chair, national maritime law section, and Ms. Kerri Froc, lawyer, legislation and law reform. We welcome you today.

I understand you have been given some directions from Maxime, our clerk, on your time.

Mr. Bowie, please go ahead. Then we'll go to the second presentation and then have questions from committee members. Please begin.

Mr. Bruce Bowie (President, Canadian Shipowners Association): Thank you very much, Mr. Chair and honourable members, for the opportunity to provide the perspective of the Canadian Shipowners Association on Bill C-7.

The Canadian Shipowners Association represents the interests of the Canadian companies that own and operate Canadian-flag vessels on the Great Lakes-St. Lawrence waterway. We also operate in the Arctic and on the eastern seaboard of the United States and Canada. As such, we are one of the key stakeholder groups impacted by this legislation.

In 2008, the 67-vessel fleet handled about 62 million tonnes of bulk commodities, essentially coal, grain, iron ore, aggregates, salt, petroleum products, and general cargo. We provide Canadian primary industries and communities with reliable economical and environmentally sustainable transportation services.

The CSA fleet is dedicated to operating mainly in Canadian waters, providing uninterrupted service to customers through long-term commitment to shippers in the steel, agriculture, mining, construction, power, and petroleum industries.

The current Marine Liability Act, which has been in force since August 2001, is the principal legislation that deals with the liability of shipowners and ship operators in relation to passengers, cargo, pollution, and property damage. The intent of the legislation is to set limits of liability and to establish uniformity by balancing the interests of shipowners and other parties.

The proposed amendments to the Marine Liability Act contained in Bill C-7 result largely from the maritime law reform discussion paper released by Transport Canada in May 2005 and the subsequent consultations that took place with many stakeholders in all sectors of the marine community. CSA participated fully in this consultation process. Bill C-7 is largely the legislative response to the discussion and debate surrounding the Transport Canada paper.

CSA has worked closely with government officials and other stakeholders in the Canadian maritime industry. As I said, we have met on several occasions with Transport Canada regarding Bill C-7. I would like at this point to commend the Government of Canada, and in particular Transport Canada, for their excellent work in developing this important policy and legislative initiative leading to amendments to the Marine Liability Act. CSA is in agreement with most of the provisions in Bill C-7. Although the bill imposes significant obligations on domestic marine carriers, there is nothing that we, as responsible carriers in the domestic regime, cannot live with.

The bunkers convention is one of the international conventions that are brought into Canada through this bill. It deals with oil pollution from the bunkers of all ships other than tankers. Departmental officials, in presentations earlier this week, pointed out that ratification of this convention will enable Canada to rely on the compulsory insurance provisions introduced in the convention as a means of ensuring that the shipowner has the necessary coverage in the event of a bunker oil spill. CSA does not object to this new provision, and members will comply with the new requirement.

Bill C-7 also creates a maritime lien against foreign vessels for Canadian ship suppliers as security for unpaid invoices. CSA again supports this provision and wishes to go on the record as not being in support of any changes to Bill C-7 that would extend the maritime lien to Canadian vessels. The purpose of the lien provision is to protect Canadian suppliers against foreign-flag vessels that do not meet their obligations.

This has been a problem, because foreign vessels and their owners do not have ties to Canada and can thus ignore their obligations to suppliers. This is not the case for Canadian-flag vessels. With corporate offices in Canada, suppliers have no difficulty getting paid by Canadian vessel owners. There is no evidence of a failure on the part of Canadian shipowners to pay ship suppliers such that a lien in their favour against shipowners and operators should be created. When claims have been asserted against Canadian shipowners by ship suppliers, either the threat of vessel arrest or a simple action *in rem* has been sufficient to ensure prompt settlement of any outstanding claim.

● (1535)

So a proposal to include a lien for Canadian ships would have significant adverse impact on the financing of our fleet. There's no question that financing costs would increase if the lenders were rendered subordinate to liens in favour of ship suppliers and CSA could not support a proposal that would increase costs with no discernible benefit for taxpayers, particularly in the current economic climate.

On the topic of the current economic climate, I would like to add that the core of the CSA fleet, which is the bulkers and self-unloaders that operate in the St. Lawrence and the Great Lakes, are currently averaging in age about 35 to 40 years old and they must be replaced. There's a pressing need to renew these vessels with modern, efficient, and environmentally green ship solutions. However, when new vessels are imported into Canada for use in the coasting trade—coasting trade is within domestic waters—they are subjected to a 25% duty under the customs tariff, resulting easily in a duty of $10 million or more per vessel when they come in. This is not only a tax on Canadian shipowners but also on the end users of marine transportation.

So the duty needs to be removed immediately for the health of the nation's manufacturing and resource-producing sectors that depend upon marine transportation and to facilitate the renewal of Canada's domestic flag fleet. The addition of a ship supplier lien on Canadian vessels would be an unnecessary action that would create undue hardship on the ship financing problem that we already have in Canada in terms of renewing our fleet.

That's our submission. Thank you very much for your attention.

The Chair: Thank you.

Ms. Froc.

Ms. Kerri Froc (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair. The Canadian Bar Association is very pleased to appear before this committee today on Bill C-7.

The Canadian Bar Association is a national association with about 38,000 members across the country. The primary objectives of the organization are improvements in the law and improvements in the administration of justice, and it is in this light that we've made our written submission, which has been circulated to you in advance, and make our comments to you today.

The CBA has been engaged in consultation with the government on marine liability amendments since at least 2005 and we are pleased to see progress made on this issue. I'm going to ask Mr. Simon Barker, who is the chair of the maritime law section, to make substantive comments about the bill.

Mr. Simon Barker (Chair, National Maritime Law Section, Canadian Bar Association): Thank you, Kerri.

Mr. Chairman and members of the committee, good afternoon, and thank you for giving us the time to speak to you.

Last night, instead of watching the results show on *American Idol*, I had the chance to spend two hours in front of the webcast and watch your deliberations on Tuesday. I must say I thought the Transport Canada submission to you was a very good one. I didn't see the slides that were presented, but I've seen some of them before, so I was able to follow that part of the discussion.

What I found more of interest was the question and answer session that you had as a round table afterwards. I put your questions and some of the answers that came from the department into three categories. One was oil pollution, which was described as the heart of the legislation; when you read the bill, it is clear that clause 11 is certainly the most substantive clause, and it is all about pollution. The other two were adventure tourism and maritime liens. I'll speak to both those this afternoon.

I appreciate that time is a precious commodity. We have put a three-page submission before you. I'm going to work on the assumption that you all have a copy of it.

The Canadian Bar Association's national maritime law section is, in general, supportive of Bill C-7. We don't find the oil pollution provisions in any way controversial. The supplementary fund protocol will increase the limits, and we believe it will better prepare Canada for an oil spill.

We don't believe the bunkers convention will have much impact in Canada. We've had a bunkers regime for a number of years. Canada, I'm happy to say, has always been in the forefront of oil pollution legislation worldwide. From 1970 on, we've had a very strong oil pollution provision in the legislation, starting with the Canada Shipping Act. Then in 2000-01, it was consolidated into the Marine Liability Act. So there aren't going to be any changes there. As I said, I don't believe it's going to be controversial in any way. The harmonization of international law is always a good thing, so to see Canada ratify conventions is a plus.

Our concerns, like those of the committee on Tuesday, touched upon two areas: adventure tourism and maritime liens. I would direct you to page 2 of our submission. The two areas touch upon two clauses in your bill: clause 1, the definition of the term “passenger”, and clause 12, which is where you'll find reference to the maritime lien, plus the general maritime limitation period, which I'll comment on as well.

Instead of getting into some of the nitty-gritty detail of clause 1 and the problem with the definition of the term “passenger”, let me approach it by saying that we're coming into summer season here in Canada, and most of us will go to a cottage, either our own or a friend's. As you're walking down the dock to the boats, let us suppose that on your left you have a boat with a motor and on the right you have a canoe. If you pass the bill as it currently reads, I would encourage you to get into the canoe, because the way the text currently reads, if you are injured as a passenger in a canoe, you will get substantially more money if liability is founded than if you get into the motorboat with the engine.

I think that is an anomaly that appears in the drafting. I think it was not intended by the department when it was drafting the bill, and I think it needs to come out.

Right now under the Maritime Liability Act, if you are injured in a boat, no matter how it is propelled, there's a limit of a million dollars for a vessel under 300 tonnes, and most small vessels in Canada fall into that category. In clause 1, you have a definition of the term “passenger”, and proposed paragraph (c) will in effect expose a passenger in a canoe to a higher limit. That may be fair for the person in the canoe, as I said to you, when you have the choice, but it will be very unfair to the person in the motorboat. Harmonization would suggest that we should all, as we do today, have a limit of a million dollars, and paragraph (c) should be removed from clause 1 in the definition of “passenger”.

The other point, which I think is a little bit more interesting, is the one noted by Mr. Volpe on Tuesday afternoon when talking about proposed section 37.1, which is where you find the definition of marine adventure activity.

● (1540)

If we go back to the transport discussion paper in 2005, the initial thought was to try to find a way to get adventure tourism out of part 4. Part 4, as you will recall from your deck on Tuesday, is pretty much about the Athens Convention, and the Athens Convention relates to big ship passenger vessels that are seagoing. We don't have that many seagoing passenger vessels in Canada.

If we do have passenger vessels, Mr. Volpe, in Toronto Harbour, they're cruise lines, but they're not seagoing. They're lake-going, but the fact is the same.

I think we're trying to find a way to pick up on the thought that the honourable member for Pembroke had on Tuesday, of keeping the good operators out of the structure and making sure the bad operators stay in the structure. The trick is to differentiate between the two.

Initially we started out by defining the term “ship”. That was felt to be not workable, and so through the consultation process with Transport Canada and the stakeholders, the idea of an activity came up. If you could put parameters around what was the activity, then that would get the good out and keep the bad in.

The point that you made, Mr. Volpe, on Tuesday was on ship safety standards. There was reference to the Canada Shipping Act and the standards for ship safety in that piece of legislation and enforcement by Transport Canada.

The point that the Canadian Bar Association national maritime law section wanted to make is on one of the criteria that appear in proposed section 37.1. If you put in another criterion requiring the adventure tourism industry to have a seaworthy ship at the commencement of the voyage, properly crewed, it will ensure that you have good operators coming out of part 4, staying in part 3. The bad operators will always be in part 4, because if at the start of the voyage the ship is unseaworthy, they won't be able to invalidate the waivers, they won't be able to get out of the structures of part 4, and the rules that you have in part 4 will continue to apply.

The other concern we have is over maritime liens, which you will find in clause 12. A maritime lien is a privilege claim. You heard discussion about it on Tuesday afternoon. The thing to remember in the discussion is that a maritime lien as a privilege claim generally ranks in priority above other claims against maritime property, be it mortgages or unsecured creditors, and the discussion of priorities always comes up in the context of a bankruptcy or a ship arrest if someone's arguing over a limited pot.

Ship suppliers have a lien today. The department officials on Tuesday described it as a statutory lien. That is lower down the ranking than a maritime lien. What, in effect, the ship suppliers are asking is to allow them to go higher up the ranking and put themselves on parity with the U.S. suppliers.

As a Canadian sitting before you, albeit with a strange accent, I would tend to agree that that's a good thing. However, what you have to do if you give someone a privilege claim is make provision for the traditional safeguards. I think some of the safeguards that are in the U.S. Maritime Lien Act are missing from our lien provision.

There was talk on Tuesday of a “made in North America” type of fix. It seems that there has been a little bit of cherry-picking going on, and some of the good parts have been taken out of the U.S. legislation and some have not.

The best analogy I can make is that you heard comments on Tuesday afternoon of an owner, a ship's master, a ship's agent. I didn't hear any comments on the webcast of a charterer. If I put it into a landlord-tenant type of analogy, the owner of the ship is like the landlord and the charterer of a ship is like a tenant. The issue that you have to come to terms with is this: is it fair for a tenant to be able to bind the landlord to charges on his property if the owner doesn't know anything about it or the landlord doesn't know anything about it? Right now in the bill you have a provision, which is a good provision, but it needs some safeguards put into it.

The last point is that a general limitation period has been proposed. That is a good thing. It harmonizes federal law across the country and that should be encouraged.

● (1545)

The one thing that is missing is what we call a "tolling agreement". A tolling agreement is a mechanism that allows parties to extend the limitation period by agreement, if they so choose. Today, tolling agreements are allowed in the province of British Columbia, for example. They are not allowed in the province of Ontario. If you're going to have maritime law uniform across the country, then things that make sense and work, as tolling agreements do in British Columbia, should be extended across the country and put into a general maritime provision.

Those are my comments. I'm going to open the floor to the committee for questions. I'll take as many as you want to throw at me. Those I can't answer I'm going to deflect to Mr. Bowie.

Thank you for letting me speak to you this afternoon.

● (1550)

The Chair: Thank you very much.

Mr. Volpe, you have seven minutes.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you very much, Mr. Chairman.

And Mr. Bowie, Mr. Barker, and Madame Froc, thank you very much for joining us today.

I have a couple of questions, although Mr. Barker, you've been good enough to explore some of the issues the committee raised, or were raised in committee, last Tuesday. So I guess my questions will be just to ask you to elaborate on some of those issues. You really raised three areas that are of some concern to us. I'm wondering if Mr. Bowie would allow us to proceed with that. There's a brief comment or observation I'd like to make.

But I guess, Mr. Barker, the big issue is that if we're going on to the definition of liabilities.... You pointed out how the definition of "passenger" needs to be defined a little better, with respect to those who opt to go on a motorized vehicle or on a paddle-propelled vehicle. Is there, in your mind, a clear indication here about who will pay for the insurance that ought to be put in place?

Mr. Simon Barker: Yes, there's a clear indication in my mind, because in a former life I was an insurance broker. But the insurance of ships, whether they're big ships or little ships.... I believe one of the witnesses coming before you next week is the Canadian Board of Marine Underwriters, if I'm not mistaken. They could perhaps speak a little bit better to the point.

The idea of the Athens Convention was that big ships would have insurance, and it would be compulsory insurance, and there would be a strict liability regime in place to back that. Other than Mr. Bowie's association and the Great Lakes fleet, we don't really have a deep-sea offshore fleet in Canada. We are a nation of importers, so we have a lot of foreign-flag vessels coming into our Vancouver, Halifax, and Montreal gateways. And all those vessels that come into our ports come in with insurance through mutual associations of shipowners called protection and indemnity associations. So they all have insurance. All the passenger vessels are enrolled in the P and I clubs—there's an international group of them. So they all have insurance.

In the small vessel context, the small vessels can get insurance in Canada, whether through the insurance companies that are headquartered in Toronto or in Montreal. So they can get insurance.

The issue is that if you take an activity such as adventure tourism out of part 4 and the need for compulsory insurance and then put it back into the part, as it has always been, the good operators will get insurance because they're good operators, and the bad operators will not have insurance because they're bad operators. They want to try to keep their costs down.

Hon. Joseph Volpe: And it won't matter.

Mr. Simon Barker: And it won't matter to them.

So what you need to do is this. If you're saying, in a piece of legislation, you're going to put a gateway proposal in place—and proposed section 37.1 is a gateway-type threshold provision—you're saying that if you meet these four or five tests, you will be felt to be a marine adventure tourism activity and part 4 will not apply.

The analysis will go on after the fact—after there's been an accident, after someone has been injured—because the attorney who's looking after the injured party will ask if there is a way he can get them out of one of those five. And they can get that boat and that activity back into part 4, to strict liability, because all the normal negligence provisions as were discussed on Tuesday will apply.

● (1555)

Hon. Joseph Volpe: Is it incorrect, then, to draw from this that the issue related to people signing a waiver, which is a natural kind of thing to do if you're going into adventure tourism—because adventure tourism is by its own nature and definition a risk-taking exercise—would be a reason why we wouldn't adopt your suggestion?

Mr. Simon Barker: No, the waiver is a bit of a red herring. I will give you a personal example.

Last summer I had the pleasure of going to Quebec City, and after a meeting there I was able to go to the Saguenay on a whale-watching tour. They have operators up there with big ships, little ships, Zodiacs. My son is not particularly comfortable around water, so we went on a big ship to give him some feeling of structure around him. We weren't asked to sign a waiver. It was a ship with all the necessary safety equipment, and we were in every sense of the term passengers. If I were to go down Hells Canyon in the Fraser River on a white-water rafting exercise or go up the Ottawa Valley to Pembroke for white-water rafting, I'd be asked to sign a waiver, because I would be engaging in an adventure. There would be no suggestion that I was a passenger.

The question in my mind arises if I go up there and the activity is something outside the normal bounds of being a passenger, and I am asked to sign a waiver and am given safety presentations, and I'm on a seaworthy ship that's properly crewed. Then I'm squarely out of part 4. I know I'm out of part 4, I'm consenting to it, and although I'm saying I'm out of part 4, all the normal rules still apply. If I am hurt, I can still sue someone, and if I can find a way to get through the waiver, then I will. It's business as usual.

What we're trying to say to you today is this. I don't believe that back in 2000 when adventure tourism was put into part 4, the idea was to capture the small-ship and big-ship Athens Convention type of seagoing vessel. The recognition we've had over the last seven or eight years in the adventure tourism industry is that it's not appropriate to capture the small adventure tourism activities in part 4. They can be dealt with in part 3. What we're trying to do is find a way to put a box around the activity so that the good stays out and the bad can stay in.

Hon. Joseph Volpe: But you haven't found that.

Mr. Simon Barker: I wouldn't say we haven't found it. I think Transport Canada, in putting forward to you proposed section 37.1, is pretty damn good. I'm only saying that if you add a condition in it about seaworthiness, it would be even better.

[*Translation*]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Mr. Bowie, my first questions are for you.

In your statement, you were against the idea that Canadian shipowners be subject to liens. Being trained as a notary, I know that even if there is a law, when you sort out the lien, there is nothing to worry about. As concerns liens, there is no problem as long as you are willing to pay. If Canadian competitors do not pay up because of financial difficulties, it might be advantageous for those who make their payments that those who will fail to make their payments be subjected to liens. Try to convince me that Canadian shipowners should not be the object of liens.

[*English*]

Mr. Bruce Bowie: The first thing to say is that providing a special maritime lien for suppliers is not a practice globally. It is the practice in the United States, and because it is a practice in the United States, Canadian ship suppliers are at a disadvantage when something happens to a ship that trades in both Canada and the United States, because the U.S. suppliers have a lien, but the Canadian suppliers do not have a lien, and they fall below these others. There are issues when, because you are lower in the ranking, it's very difficult to go after the shipowner, because the ship has left the country and you can't find the owner or find the ship in order to exercise any rights you have under normal maritime law to get payment.

That's not the case with the Canadian ships. We're always operating in the Canadian system. All the rules that suppliers have within the Canadian judicial system for getting paid—seizing the ship, *in rem*, and those sorts of things—are available to them. There isn't a requirement for an additional provision.

● (1600)

[*Translation*]

Mr. Mario Laframboise: If I understand you correctly, at the international level, this is not the usual practice. As a Canadian shipowner, you do not want to have obligations that others, at the international level, are not subjected to. Is that right?

[*English*]

Mr. Bruce Bowie: Yes, that's right.

[*Translation*]

Mr. Mario Laframboise: You conclude by saying that you would like to see the 25 per cent surtax on imports abolished. You know, of course, that this tax is designed to protect the shipbuilding industry in Canada. Are you not a little uncomfortable in asking us to remove this protection?

[*English*]

Mr. Bruce Bowie: Not really, because in effect the policy is not effective.

Among our members we haven't built a ship in Canada since 1985. All the policy has done, in fact, is impede us from renewing our fleet. The Canadian shipyards don't really have the capacity or the capabilities to build the kinds of ships we need. We really need to go offshore, but to go offshore we have to pay a 25% duty. It's really a punitive tax on doing business in Canada. It's a no-win situation for us. The Canadian shipbuilders can't build it, and if we want to replace our fleet, we have to go offshore and pay a 25% tax, and then we're not competitive with the rail and truck companies, which don't pay those kinds of duties on their capital infrastructure. We're not able to compete with them for the domestic trade.

[*Translation*]

Mr. Mario Laframboise: If I understand you correctly, you are saying that Canadian shipowners do not have the capacity to do this work for you. Is that right?

[*English*]

Mr. Bruce Bowie: Yes, that's right. They haven't built a ship for us since 1985, and the yards that were available then are no longer in operation.

[*Translation*]

Mr. Mario Laframboise: My next question is for Mr. Barker.

In regards to adventure tourism, you would like us to add a criterion that speaks to the question of quality and I can understand that. In your view, there should be a requirement that vessels destined for adventure tourism be seaworthy and properly crewed. If we added this criterion, who would assume that responsibility: Transport Canada or the Coast Guard? Have you gone as far as to consider who should be responsible for supervising adventure tourism operators?

[*English*]

Mr. Simon Barker: The regulatory authority for shipping and marine safety in Canada is Transport Canada. They use the Canada Shipping Act and the regulations that support the Canada Shipping Act to do that.

What I'm suggesting, and what the national maritime law section of the Canadian Bar Association is suggesting, is not that you do away with the marine safety rules for shipping. They would still apply, Transport Canada would still enforce them, and ships would either be fined for not complying or they would comply. What we're suggesting here is that it be a double test. If you want to ensure appropriate minimum safeguards for adventure tourism, you can do it in two ways: you can do it when the ship is built, you can do it when Transport Canada enforces it, and you can also say that there is an obligation on the shipowner himself or herself to ensure at the commencement of the voyage that the vessel is seaworthy and is properly crewed. If the shipowner does that, he or she can avoid part 4 of the Marine Liability Act. If he does not have a seaworthy vessel and he does not have proper crewing, if he gets caught by the enforcement teams, he'll get fined, and if an accident occurs during the voyage and someone gets hurt, any waivers that he's relying upon will be null and void and part 4 will apply. The strict liability provisions will apply. There is a double whammy there.

I think Mr. Volpe's point the other day was that there's something missing from proposed section 37.1, a standard. I heard the department say it was missing from section 37.1 because it's somewhere else in the legislation, and another part of Transport Canada would enforce it. What we're saying is to have both. If you have both, you've covered the whole base. You look after the good operators and you make sure the bad operators are penalized.

● (1605)

[*Translation*]

Mr. Mario Laframboise: It would oblige them to obtain the necessary insurance.

[*English*]

Mr. Simon Barker: What forces them to insure is being a good operator: insurance is risk management. If you're someone like Sears Canada, for example, I suspect you don't have insurance because you're big enough to look after it yourself.

Those of us who have insurance on our cars and our homes and our boats have it because if we have an accident we can't simply write a cheque right there and then, and we ask an insurance company to do it for us. Good operators with a bottomless bank account don't need insurance. They can look after any claims they're presented with themselves; they can self-insure. But what you find is that most operations have cashflow issues, so they don't have bottomless pits of money. From a risk management point of view, they spread their risk around, saying that if A happens, then this insurance company will look after it, and if B happens, then that insurance company will look after it.

I think the whole idea of compulsory or not compulsory insurance is getting away a little from the true focus, which is on having a minimum safety standard and making sure the good operator is running a good tourism operation.

The Chair: Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

Thank you, witnesses, for joining us today on a bill about which, certainly in my office, we've had a lot of difficulty getting information. I thank you for coming forward and providing it today.

Mr. Bowie, I'm curious. You have this fleet of ships that are reaching their due date. Typically, what would be the value of a ship like this?

Mr. Bruce Bowie: That will depend on the individual ship, but to replace a ship like that, you'd be talking about $50 million or $60 million per ship.

Mr. Dennis Bevington: And is the problem with the Canadian shipyards that they're just not handling this size of ship, or is it the particular type, or why have they quit providing them?

Mr. Bruce Bowie: In many cases it's a question of the size of the shipyard and whether or not the dry dock is capable of accommodating them. In other cases, shipyards—such as Davie, for example—don't have an interest in building these kinds of ships. Their business model is based on larger offshore types of value-added products that we don't provide. Our ships have a high component of steel and are essentially for bulk movements. So the yards that have the capability don't have the interest.

Mr. Dennis Bevington: And are the yards that are providing ships providing offshore ships that would not fit under this duty? Is it that the duty would not apply to them outside Canadian waters?

Mr. Bruce Bowie: I'm sorry, I'm not too clear on your question.

Mr. Dennis Bevington: Well, the shipyards are building ships now.

Mr. Bruce Bowie: Yes.

Mr. Dennis Bevington: How many of those ships that they're building are being favoured by the duty that's on? Would the majority of them get an economic advantage out of this 25%?

Mr. Bruce Bowie: A lot of the work they are doing is maintenance and repair on our fleet, and certainly the Canadian yards are critical for that. Some of the yards have taken advantage of an Industry Canada policy that provides a financing facility for foreign shipowners to have those ships built in Canada, but they're mainly focused on smaller ships, such as tugs and that sort of thing, for which they can get the benefit of the industry program and then either supply them here or overseas.

Mr. Dennis Bevington: But would the duty apply to the tugs and to the other boats?

Mr. Bruce Bowie: It would not apply to foreign shipowners who have them built in Canada. They can benefit from this program and therefore improve.... Because there are a very limited number of Canadian shipbuilders, essentially they need to focus on niche markets.

The other main role of the Canadian shipbuilders is to support our marine security requirements as a country, so they're very focused on responding to the needs of the Canadian Coast Guard and the navy, on the kinds of ships they need in order to provide safety and security services for this country.

● (1610)

Mr. Dennis Bevington: Okay.

Mr. Barker, thank you for your presentation. I don't know that I have any other questions for you. Sometimes the fine aspects of the legal agreements are difficult, but quite clearly what you're saying is that these waivers are still going to be much...as to how they're made up, how they're written, how they're signed, and the process by which the waivers are in place for adventure tourism operations will be subject to law. They can either work or not work.

Mr. Simon Barker: That's correct, Mr. Bevington. What I'm saying is that if you take adventure tourism out of part 4, it goes back to the way it was. All part 4 does is say that waivers are null and void, so if you're out of part 4 and you're in adventure tourism activity, waivers are there. If a waiver is well written, it stands up. If it's not well written, it won't stand up.

Mr. Dennis Bevington: So there's case law—

Mr. Simon Barker: There's case law and precedent; it will be business as usual for the adventure tourism industry.

Mr. Dennis Bevington: And they seem to be comfortable with that?

Mr. Simon Barker: I believe they are. The message I've been getting is that they were happy before 2000 and they will be happy after 2000 if you pass the bill as it exists today.

Mr. Dennis Bevington: Thank you.

The Chair: Ms. Hoeppner.

Ms. Candice Hoeppner (Portage—Lisgar, CPC): Thank you very much, Mr. Chair.

Thank you to the witnesses who are here today. I appreciate having the opportunity to speak with you.

I thought I should clarify that unfortunately I was not able to be here on Tuesday, so one of my colleagues, the member for Pembroke, Cheryl Gallant, did sit in. I know she was able to ask several questions regarding her riding.

I want to change the focus a little.

Mr. Bowie, you mentioned that these amendments were brought forward and came about because of a paper that was produced in 2005 and also because of consultations that were conducted with all members of the marine community. Can you expand a little on that? I'm interested in hearing about what kinds of consultations took place. Was it just with shipbuilders or was it indeed with all parties in the marine community?

Mr. Bruce Bowie: Certainly that question could best be answered by the government witnesses, if you get a chance. I believe the minister may speak to this. That would be a question for him.

My understanding of the consultation process is that Transport Canada determined that there was a need to review the Marine Liability Act. A number of issues had been identified by all stakeholders across the system with respect to the current legislation. They produced a position paper on all of the issues that they identified and that were identified by stakeholders such as the adventure tourism industry, shipowners, and ship suppliers. They then went out with that paper to a broad cross-section of stakeholders, sought their input, and as a result of that input, made recommendations to this committee in Bill C-7. So my understanding certainly is that although we had specific discussions about issues that were of interest to domestic shipowners, there was broad consultation, as I said, with ship suppliers, tourism interests, and others across the country.

Ms. Candice Hoeppner: Thank you for that. Were the shipbuilders consulted, though?

Mr. Bruce Bowie: Yes, I believe so.

Ms. Candice Hoeppner: Overall, what is the reaction of the shipbuilders? I understand from what you've presented that they are generally pleased with this. What kinds of implications will it have on that industry, even specifically in regard to oil and cleaning up and making sure the pollution is taken care of?

Mr. Bruce Bowie: This is a bill that deals essentially with marine transportation, so I'm not sure that there is a huge linkage with shipbuilders, other than their relationship with shipowners. But in terms of the shipowner community and the kinds of issues the bill deals with, I think there is a general feeling that it is comprehensive and covers the various liability needs across the industry, from ship pollution to accidents, safety, and other things.

● (1615)

Ms. Candice Hoeppner: I see. So your comments are for shipbuilders as they relate to the shipowners—

Mr. Bruce Bowie: That's right.

Ms. Candice Hoeppner: —and how it's going to help them conduct their business.

Mr. Bruce Bowie: Yes. Our perspective is from the shipowners, not the shipbuilders.

Ms. Candice Hoeppner: Right. Thank you very much.

Mr. Barker, could you tell us if there are any international implications that would come forward from this amendment, and if so, what they would be?

Mr. Simon Barker: Do you mean the amendments in general for marine liability? The implications are that it would be a good thing and they would harmonize.

Shipping is a very international business, and the pollution parts of the bill.... The supplementary fund has an international focus and it would basically give Canada more money in the event of a spill if a convention ship or a tanker was involved. Given that international ships visit our shores on a regular basis, that's a good thing. Thankfully, in the 30 to 40 years that we've had environmental protection legislation in this country, we haven't had a big spill. The Canada Shipping Act talks of a 10,000-tonne response capability. We've never had a 10,000-tonne spill in this country. The *Nestucca* spill on the west coast back in the late eighties was an 800-tonne spill. The biggest spill, I think, was a 7,000-tonne spill when the *Kurdistan* broke its back in the Cabot Strait in the gulf in the late seventies. So we've never had a catastrophic spill here and, touch wood, we never will.

But to be party to the supplementary fund convention.... We're already party to the civil liability convention, the fund convention, the limitation liability for maritime claims convention, Athens—conventions that this bill embraces. The fact that we're harmonizing with the other shipping nations around the world is a good thing.

Maritime liens, as we heard on Tuesday, are a North American fix. They're slightly out of step with the international community with the maritime liens, and the proposal is to give Canadian ship suppliers the same footing as American ship suppliers in situations where priorities become important. I think that is to some degree a North American problem for us in that ships have been known to choose Canada as the place to go bankrupt because of our priorities order. The port of Vancouver was popular for a while there for a certain number of companies that would declare bankruptcy—priority hearings—and the difficult thing for Canadian suppliers is that they would always be at a disadvantage if an American supplier had a claim too.

I used to defend American suppliers when I lived in Vancouver, and it was always a lot better than if you were defending a Canadian supplier because you were guaranteed payment. That always struck me—other than the fact that I was getting paid—as being somewhat unfair to the Canadian, because it was his turf that we were arguing on and the American was getting the benefit of it.

So the proposal by the Canadian suppliers is to create some form of parity. I think that is a good thing, but as I said, if you are giving someone a privilege—and I believe you are by bumping them up the line—you have to put a few safeguards in place too. Charters cannot or should not be able to bind owners and have ships carry that lien around. That is a safeguard that is in the U.S. legislation and it's missing from ours, and I think ours needs to be tightened up as a result.

Is it a good thing to give Canadian ship suppliers a priority ranking? I believe it is. You should look after your own.

Ms. Candice Hoeppner: So obviously this is timely. I'm just wondering, and I'm not sure if you can answer this, but why has it taken so long for this to happen? When I hear you describe it, it seems as though it should have been created when this act came on in 2005. That's probably not an answer for you.

Mr. Simon Barker: You're correct, that's not a question I can answer. Things take many years for a whole bunch of reasons. Sister ship arrest is a good example. You'll find sister ship arrest provisions in this bill. Sister ship arrest is a tool that ship lawyers have in their armoury. You don't use it all the time, but when you do use it, it's a very effective tool.

We've had a dispute in the private bar for many years as to how to resolve sister ship arrest. Harmonizing the French text and the English text is something we all agree on. That's a no brainer, if I can put it that way. With other proposals, we've had some debate over the years. Why has it taken 15 years to come here? Maybe that's just the way the system works. Consultations take a while. Canada ratifies conventions at certain times for a whole bunch of different reasons.

So that's a question I don't even think a minister could answer, to some degree.

● (1620)

The Chair: Mr. Volpe.

Hon. Joseph Volpe: Thank you once again, Mr. Chair.

Mr. Barker, Mr. Bowie, thanks again for your presentation.

Mr. Barker, you've anticipated a lot of the questions by your explanation, but I wonder if you could spend just a moment on your item on page 2 with respect to the contractual link between supplier and the owner of the ship, which you just raised again. You think that particular link needs to be strengthened in order to arrive at a more equitable treatment for those Canadian suppliers that you've identified as some of your former clients and who appear to be getting short shrift.

What is it specifically that you would suggest we do or that this committee consider in order to improve the proposed legislation to bring about that desired effect?

Mr. Simon Barker: Mr. Volpe, what I believe the section is proposing to the committee is that of all the parties that are involved in supplying a ship when it arrives in a port, depending on the contractual arrangement between a shipowner and a charterer—it can be a time charterer for a specific period of time, or it could be a voyage charter for a specific voyage, or it could be what we know as a bareboat charter, which is basically the use of the boat for a period of time for whatever purpose—the master can speak on the behalf of the charter at times, and he can speak on behalf of an owner at times. The stevedores, the ship suppliers—which is a general term, and if I can use Venn diagram type of discussion, they are a big set as opposed to a subset.... Different suppliers will have different contractual relationships with the owner and the charterer. The position the section has is that if you're going to contract on behalf of the owner and you're speaking as a representative of the charterer, there should be some form of notice provision that you give the supplier to say you're speaking on behalf of the charterer, and this is the owner. The notice provision appears in the U.S. Maritime Lien Act, and I also believe it also appears in the maritime liens convention.

What the section can do, if it so pleases the committee, is provide you with specific words for the safeguards. I know you have a week between now and the next appearance of witnesses, and we can supply some specific words so you can look at them, if that would be helpful.

Hon. Joseph Volpe: It would be very helpful. Thank you.

Mr. Bowie, I wonder if I can come back to you for a moment, because you raised an issue that had not been contemplated in our assessment of this bill. That is the issue that's been raised by my colleague Monsieur Laframboise, the issue of eliminating the excise tax on ships acquired abroad.

I'd like you to pursue the particular business model a little further, because my colleague indicated, of course, that the initial tax was designed to protect Canadian manufacturing, and yet you have indicated that there hasn't been significant shipbuilding, or at least construction of ships that you and your association would utilize, since 1985. I'm wondering about the business model that says we can forgo paying 25% of the overall cost abroad, but if we put that amount towards acquiring some equipment here, that capacity would actually be available to us.

Mr. Bruce Bowie: I'm sorry, I didn't mean to put a bit of a red herring in the discussion of this bill, because the duty policy is not a part of this bill at all. I simply wanted to make the point that anything that further impedes the ability of Canadian shipowners to finance a fleet that is aging and that needs to replaced, if we're going to continue that economic activity in Canada, we would not support. It was in the context of potentially applying a lien against Canadian ships, which would mean that lenders would charge more for financing and that sort of thing. I just wanted to put that in the context of this bill.

● (1625)

Hon. Joseph Volpe: That's fine. Mr. Bowie, I compliment you on your ability to generate a discussion on an item that really isn't part of the bill. I acknowledge that, and I compliment you on your ability to raise the issue, especially in front of the government members.

Having now raised that issue and having put forward a business model for protecting Canadian commerce, would you again address my question, which is that, given all of the millions of dollars you would be asking government members to forgo or relinquish if that excise tax were eliminated, would you not recoup those moneys by having Canadian shipbuilders invest in the equipment necessary to provide you with the product you purchase abroad?

Mr. Bruce Bowie: In terms of the future of the Canadian shipbuilding industry, I really don't think it lies with the commercial markets. And I think that's the issue you're raising: can we generate a commercial market in the Canadian shipbuilding industry through the use of the duty and that sort of thing?

Essentially the capacity for shipbuilding in Canada, as I'm sure you know, has gone down over the last couple of decades. Yet, as I said, we have a pressing requirement to utilize that capacity for some very important safety and security needs of this country in terms of replenishing the coast guard and the navy fleet. To me, that is where government and Parliament should focus in terms of providing a steady stream of government procurement instead of a peaks and valleys type of approach, to provide a steady stream of Canadian procurement to the Canadian shipyards so they can continue to operate a viable business.

If that could be achieved, that would fully use the capacity available in this country to build ships. At the same time, it would certainly be good for Canadian shipowners, in the sense that we will have yards that are practised in building modern technology. Clearly what the coast guard and the navy offer in terms of new technology to shipyards is far superior to what we could provide. The shipyards would then have the ability to provide excellent maintenance services, which we need to keep a Canadian fleet going as well.

[*Translation*]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: Thank you, Mr. Chair.

Mr. Barker, I would like to come back to my previous question regarding the new criteria that you would like to add for adventure tourism specifically seaworthiness and proper crew. I would not want to see an amendment leading to confusion and which would force operators to carry much higher insurance. That's the problem.

If we add the seaworthiness and proper crew requirement, one of your 38,000 members might, in case of an incident, accuse the operator of not having had a seaworthy ship and a proper crew. Don't you think that adding that criterion might lead to an increase in litigation and insurance cost for operators?

[*English*]

Mr. Simon Barker: No, sir, I don't believe it would.

The phrase “to provide a seaworthy ship at the commencement of the voyage and one that is properly crewed” is a term we've had in maritime law since the days of the Lloyd's Coffee House in the 17th century—the idea of sailing ships leaving London to go into the far reaches of the empire to bring home all the plunder. You can never guarantee a ship will be seaworthy during the voyage—or if you watch the Johnny Depp movies, *Pirates of the Caribbean*, at the end of the voyage—but you can certainly guarantee that it will be seaworthy at the start of the voyage.

In clause 9, proposed paragraph 37.1(b), you talk about “safety equipment and procedures”. That's something you have to have in place at the start of the voyage. Safety equipment goes to the seaworthiness of the vessel. And with respect to procedures, in fact I think they're talking about safety briefings before the voyage that are very similar to aircraft, when you have the briefings as to where the exits are and the emergency lighting and all the rest.

Putting in a new paragraph (e), in effect requiring that the adventure tourism activity meets the condition of seaworthiness and that it is properly crewed at the start of the voyage, does not cause the good operators in the marine tourism activity any problems whatsoever—or it shouldn't. It will cause the bad operators a problem, and those are the types of operators you need to be legislating against. The good operators will still be able to get insurance because they have seaworthy vessels.

● (1630)

[*Translation*]

Mr. Mario Laframboise: Yes, but it seemed to me that that whole section of the bill dealt specifically with the question of insurance. I stand to be corrected, but I thought that the industry, particularly that of adventure tourism, wanted to go back to the previous regulation regime precisely because of insurance. Am I wrong?

[*English*]

Mr. Simon Barker: It's right in that they want to go back to the old, because as I understand it, they couldn't get the insurance, compulsory insurance, at the limits that were required by the Athens Convention and by part 4. This proposal in the bill is to take adventure tourism, as an activity, out of part 4 and out of the requirement to have compulsory insurance and out of the requirement to have a strict liability regime and put it back in the position it was in before, which is getting insurance in the normal marketplace without the increased limits. Getting insurance in the marketplace for the activity is based upon a number of different risk factors by which underwriters will rate the operation: the seaworthiness of the operation, the seaworthiness of the vessels, the risk factors. There's a whole slew of them the insurance industry will look at in rating a premium for insurance. The insurance companies will require these operators to provide waivers, to give briefings.

The bottom line is that the people who go to these activities are looking for risk. When you're a passenger on a vessel, whether it's in the Saguenay looking at the whales with your son, whether it's in Toronto Harbour on one of the cruise ships that go out at night, whether it's in Vancouver, you're not looking for risk as a passenger, you're looking for carriage from A to B. I think that's the difference: when you go looking for risk, you would like to get some risk. You want to find the rocks because you want the whitewater that's close to the rock.

When you go shopping, you're looking for a good operation that has all the equipment painted the right colour, has got all the nice brochures, has seaworthy vessels, and gives you a nice experience, so then you can go back and recommend it to your friends. Those are the people who will have insurance, whether you make it compulsory or not.

Athens has a compulsory system and has increased limits, because with those increased limits and with that compulsory system comes a strict liability regime that is very hard for you to get out of. You have to prove certain things in the normal negligence action. You don't have to prove a number of things in a strict liability regime. That's the trade-off part 4 has.

The adventure tourism people, as I understand it, are saying, "Take us out of part 4, but we're still caught by the normal liability rules and we'll still try to protect ourselves by waivers. We'll still risk manage with insurance. Because there won't be as high a limit, we'll be able to get better premiums that we can afford and we'll be able to run better operations."

That's why I believe, to go back to Mr. Volpe's point on Tuesday, that a standard is important. You're trying to come up with a minimum safety standard for these people for this activity, and you can do that through the Canada Shipping Act, and I believe you can also do that through this piece of legislation.

The Chair: Thank you.

Mr. Watson.

● (1635)

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

Thank you to the witnesses for appearing.

Mr. Chair, if I don't use all my time—I'm not sure if I will—I'd like to split it with my colleague Mr. Mayes.

Let me return to the issue of the maritime lien for a moment. As a foundational question, how significant is the problem of unpaid invoices for Canadian ship suppliers? Can you scope that out a little bit for us?

I'm not sure who wants to answer that.

Mr. Simon Barker: I'll let Mr. Bowie reply, because his clients are the ones who don't pay their bills.

I jest.

Mr. Bruce Bowie: Yes, surely you do.

Mr. Jeff Watson: I don't mind swashbuckling up here, either.

Mr. Bruce Bowie: Yes, I couldn't really give you a number in terms of the quantity. Certainly in my discussions with the ship suppliers, they report significant numbers of cases where the ship has disappeared and they have not been able to get paid. That, clearly, has had a very adverse impact on the ability of those suppliers to continue to operate, if it's a major customer. So it's certainly a significant problem for them, with the foreign ships.

Mr. Simon Barker: To give you some context, if you're the Canadian ship supplier and you're in a bankruptcy proceeding, there's a pot of money on the table and the government takes its whack, the port authority takes its whack, the banks take their whack, and the American supplier comes in and takes his whack. As a Canadian supplier, you're not left with much at the end of the day. So the fact that this proposal has an ability to bounce you up the line—

Mr. Jeff Watson: Yes, perhaps I didn't articulate it well, judging by your answers, because I was asking more about how widespread the issue is, perhaps, and not about the significance to the actual ship suppliers. I understand that it can be a very significant thing that happens to them. I just wanted to get a scope of the problem we're trying to address with the maritime lien and how widespread it is.

Mr. Simon Barker: Personally, in the 25 years I've been practising maritime law in the U.K. and here, I've had one case in Vancouver involving ship bankruptcy when there was a pot of money to be divided up. As in the example I gave earlier, I was representing the U.S. supplier, so I was up the line. But one in 25 years is—

Mr. Jeff Watson: Okay. I have a further question on that.

In your brief, Mr. Barker, you explain to us that this issue gets us on par in terms of a North American solution with the United States. In your brief, you suggest that if you compare it to the U.S. Maritime Lien Act, some safeguards are missing. I think you've defined a couple of them in your brief.

Let's presume the goal is actually to harmonize with the United States standard. Are these the only two safeguards missing when you compare it to the U.S. Maritime Lien Act? You used the word "many", which I would presume is more than two. If that's the case, what other safeguards do you think are missing, and do you think they should be included? Those are two separate questions.

Mr. Simon Barker: I think some safeguards should be included. That's the position of the section. The danger with cherry-picking the U.S. legislation, the Maritime Lien Act, is that there's a lot of it, and a lot of the provisions that work in the U.S. will not work up here in Canada. The numbers are different. That's why I made the offer to the committee to provide some words, because I believe there are words out there that we can massage for you, if I can put it that way, to put this into a Canadian context.

I think there are two safeguards that you need to have there as a minimum.

One is a notice provision, so that people are put on notice that charterers cannot bind owners. If there's a link between the supplier and the owner, then fine—I mean, fine the property. For a lot of companies, the ship is the only asset they have. It's a huge asset and it moves around the globe, so as an owner, you're not going to want liens attaching to your asset for no reason. So I think there should be a notice provision as a minimum.

The other one is that there should be a tail to it; you can't have a lien out there forever. There should be an extinguishment type of situation. If the bill's not going to be paid, then take proceedings. A lien is just something that is one step before starting an interim action in a courtroom. Take the action, start it, and argue it. If you have a point, you'll succeed; if you don't have a point, you won't succeed. But you can't have a lien out there forever, so there should be a tail to that. As for whether that tail should be three years, such as the general limitation period, or whether it should be shorter, the American legislation talks about 60 days, so there is a difference in timing.

I think what we, as a section, should do for you is take the weight of the American legislation and see if there are words we can put together for you as a committee that will suit a Canadian context and provide the safeguards for what is a good idea.

● (1640)

Mr. Jeff Watson: Thank you.

The Chair: Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

I'd like to direct my questions to Mr. Barker, just so I understand the words totally in regard to agreements you talked about that should be recognized. Is my understanding correct that between the provider of the service and the recipient of the service they can actually, in their mutual contract agreement, extend the limitations of that agreement beyond what is stated in the three years or two years?

Mr. Simon Barker: Yes. What you find in the Marine Liability Act today, under the Hague-Visby Rules, which is the cargo liability regime in the legislation, is a one-year limitation period in the cargo section. It's a period that runs from the day of discharge. The cargo is discharged. It gets to the consignee's warehouse. It's found to be damaged upon arrival. There's a clock ticking, and the cargo interests then have a year to bring claim against the shipowner or the carrier for the damage to the cargo.

Maritime lawyers regularly get called on the eleventh month, the thirtieth day, and at about the twelfth hour to say, "The day of discharge was a year ago. Can you protect our interests?" What you find is that if the ship is a German line vessel or a Chinese line vessel, the claims department is in Hamburg, Shanghai, New York, or Hong Kong. Cyprus, for example, has a foreign fleet. Not one of their ships ever goes home to Cyprus, because they can't fit into any of their ports. They have satellite offices at locations around the globe.

You find the claims office. You contact them and say, "We've just been retained. Can we have an extension of sue time to allow us to collect some papers and collect some thoughts?" The shipowner writes back and says, "Subject to all of our usual defences, you can have an extension of time for three months to gather your thoughts." That's a tolling agreement. Whether it is the Federal Court of Canada or the Supreme Court of British Columbia—which has an end-run jurisdiction for shipping—or indeed any other courtroom that hears cases, it's a form of dispute resolution.

Most cargo cases are resolved outside the courtroom, but you need time to do it, especially if you're in different time zones with insurance companies, whether they're in London, New York, or wherever. Invariably, the claims department of the shipping company and the insurance person are in different countries, different time zones. You need that little bit of time. A tolling agreement, in the context of federal navigation and international shipping, makes a lot of sense.

In British Columbia, they're allowed in the provincial courts; in Ontario, we don't allow them. When I get that eleventh-month, eleventh-hour request, I get to file in the Ontario court a notice of action that gives me 30 days to catch my breath before I hit them with the full pleading. I have to launch the lawsuit in the provincial system, and that doesn't work sometimes. That's why tolling agreements do make sense in this context.

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair.

I would like to welcome the panel members, and I would like to thank them for their valued input into this Bill C-7 legislation.

My question is to Mr. Barker.

Mr. Barker, you said that looking at the compulsory insurance for adventure tourism operators is getting us away from the real issue, which is whether the operators are operating safely or not. I want to understand why you feel there should be additional rules in the law needed to ensure that adventure tourism is safe.

● (1645)

Mr. Simon Barker: Sir, my understanding of adventure tourism is that a lot of the operators today are safe. The message, certainly, that we got is that if you keep them in part 4 of the Marine Liability Act and you put them into this compulsory insurance regime with strict liability, they can't get insurance at the level that part 4 requires. If you take them out of part 4 and put them back to where they were prior to 2000-01, they can get insurance. They can still operate. Although it's not compulsory insurance, they will still be able to get insurance. It'll be voluntary insurance. As I said, if they're big enough organizations, they don't even need to get insurance; they can self-insure.

The insurance side of it is an element of risk management. The difference between being in part 4 and being out of part 4 is compulsory. If you're in part 4, you have no choice; you have to get insurance at the limits that are required by the legislation. The adventure tourism industry is telling everybody they can't get insurance at those limits, so either they exist outside of part 4 or they don't exist. If they exist—and they clearly can exist if you put in proposed section 37.1 as the bill proposes—then you're saying to them that if a marine adventure activity fits these criteria, it can come out of part 4.

I'm saying if you put in another condition saying that it's a properly crewed seaworthy vessel at the commencement of the voyage, the minute it is not a seaworthy vessel that's properly crewed, it doesn't come out of part 4. The waivers are null and void, and the public in that respect is protected. As Mr. Volpe said today, there is a standard missing in proposed section 37.1, and having a seaworthy vessel at the commencement of a voyage is that standard.

Mr. Sukh Dhaliwal: Thank you.

The Chair: That's it. We've gone our complete rounds. I think I'll go one free round and see if anybody has any other comments to make. I know Monsieur Laframboise has a brief question, and then Mr. Bevington.

[*Translation*]

Mr. Mario Laframboise: I just have a short question concerning maritime liens. You are saying, Mr. Barker, that shipowners are not protected. It is rather technical. We want to force foreign shipowners to pay their debt to Canadian suppliers. You seem to say that there should be a contractual link with the owner. Are shipowners easily accessible?

Mr. Bowie might also answer if he wishes. I would not want that, because of the lien system and because we need the agreement of the owner to negotiate with charterers, suppliers or others, this results in a delay in maritime traffic in a harbour. I just would like to be sure of this. I would not want that this new way of doing business, specifically linking a lien to a shipowner, enable suppliers to detain a ship in harbour until they get… Will this slow down maritime traffic? That is the question I am asking.

[*English*]

Mr. Simon Barker: No, it's not, sir. The nice part about a maritime lien is if you have a ship in your port—and it doesn't matter whether I were a U.S. attorney based in Seattle or a Canadian lawyer based in Vancouver—and you are threatening to arrest the ship, you don't arrest a ship lightly. It's not something you do willingly, because you have a whole operation rolling. You can arrest a ship, and I have, in the past, arrested a ship in a two-and-a-half-hour period. The Federal Court of Canada is very good. They have a duty officer. They can open the courthouse after hours. You issue a pleading. You issue an affidavit. You can arrest the ship.

Loading operations don't stop just because a ship is under arrest. Unloading operations don't stop. What you are telling a shipowner is that vessel cannot leave the port until this matter is resolved, and the matter of resolve being that either you post security and pay the letter of undertaking from one of the international P and I clubs, or you put money in court or put up a bail bond or a surety. The arrest is something that will very quickly focus an owner, and if the owner is in Vanuatu or Liberia or Cyprus or anywhere else around the world, if his or her ship is in the port of Vancouver and it is under arrest, the P and I club correspondent in Vancouver for that particular ship will be on the phone asking what they need to do to get the ship out of arrest.

Half the time that conversation takes place before the arrest is even done, because the threat of arrest is sufficient. So you'll never be chasing an owner around the world. You'll have their undivided attention, because their asset is right in your own port. A maritime lien is a very strong tool, and the arrest of a ship is a very strong tool to resolve disputes.

● (1650)

[*Translation*]

Mr. Mario Laframboise: I would like to hear Mr. Bowie's view on that subject. In fact, if the shipowners are American, there is no problem. But if they are in Cyprus or Nigeria, there should be no problem either to reach them. Is that correct?

[*English*]

Mr. Bruce Bowie: I just represent the Canadian shipowners. We are based in Canada and we're easy to get hold of, and if you want to get paid you know where to find us, essentially. That's why we don't feel there's a need for a very powerful tool when there are Canadian laws that deal with going to court and getting paid and that sort of thing.

The Chair: Mr. Bevington.

Mr. Dennis Bevington: I have just a quick question. We just went through an exercise with the European free trade agreement where we are lifting the tariff on ships coming from Norway. Is Norway a potential supplier of ships to the Canadian system?

Mr. Bruce Bowie: That is not likely, no. We're not likely to buy our ships in Norway, and those agreements would phase out tariffs over 15 years. By the time that's phased out, we're out of business already, sort of thing, because of the age of our ships.

The main concern with respect to Norway is the offshore oil and gas business and the supply and support to that business, and business going down in the North Sea and a lot of ships being available to work in other areas of the world. That is where the key concern is with respect to existing ships, not new ships.

Mr. Dennis Bevington: Thank you.

The Chair: With that, I'll thank our guests for being here today. It has been very enlightening. We appreciate your time and effort to bring the committee up to speed on your points of view. Thank you very much.

For the committee's interest, appearing on Tuesday will be Minister Baird and Minister Merrifield, along with department officials. They've managed to give us 90 minutes, so I don't think I'll add the extra 30 minutes. We'll just go with a full 90-minute meeting with the ministers, if that is okay.

Have a good weekend.

The meeting is adjourned.

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