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## **Standing Committee on Natural Resources**

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**EVIDENCE**

**Tuesday, March 24, 2015**

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**Chair**

**Mr. Leon Benoit**



## Standing Committee on Natural Resources

Tuesday, March 24, 2015

•(1530)

[English]

**The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)):** Good afternoon, everyone. It's good to be here today.

We're here today to start our study on the pipeline safety act, which is Bill C-46, officially called an act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act.

We had agreed to have three meetings plus the clause-by-clause consideration on this piece of legislation. Our first meeting today is with officials. Our second meeting will be with members of the National Energy Board. Our third meeting, an extended meeting, will be with witnesses from the industry as presented by our members. After that we will go to clause-by-clause.

Before I get to that, there are a couple of things that I really should deal with. The first is the budget for this study. You've all received a copy of it. The amount requested is \$6,700. Of course, we only spend that if it's required.

I'd just ask the committee for their agreement to approve that budget. Is it agreed?

**Some hon. members:** Agreed.

**The Chair:** Second, you all received an invitation to a meeting at noon today. It was an informal meeting of the Turkish delegation from the natural resources sector, including some business people—

**An hon. member:** I didn't get that.

**The Chair:** Yes, you should have. I know it went to all members of the committee.

At any rate, I chatted with some of you earlier about this, two weeks or a week and a half ago, when I found out about it. We did have the meeting, and it was a very good meeting with a large group of Turkish officials and business people discussing natural resources. The meeting was at noon today, so we did provide a lunch. The lunch was about \$600.

I'd just like to get approval from this committee to pay for that lunch.

Go ahead, please, Monsieur Caron.

**Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP):** I don't have any problems with it, but I just checked with my colleagues, and we didn't receive an invitation. You might want to check the original email just to ensure that you have the correct addresses.

**The Chair:** We actually have it right here. It has you all listed on it.

**Mr. Guy Caron:** Can I take a look?

**The Chair:** Yes.

**Ms. Joan Crockatt (Calgary Centre, CPC):** [*Inaudible—Editor*]...he was hunting for players.

**The Chair:** I was really trying to get people to come out, too, so that we had a good contingent of members of Parliament.

Probably discussing it with your staff would be in line. I know how it is; we get to be so busy, and there's so much coming at us at once.

Is it agreed that we pay for that lunch from our budget as well?

**Some hon. members:** Agreed.

**The Chair:** Ms. Block, did you have something else?

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** No. Judging by the opposition's reaction, I just thought maybe you would want to confirm that you did in fact send the email.

•(1535)

**The Chair:** Yes.

Very good. Let's get to the meeting.

Today we have officials from the Department of Natural Resources who are no strangers to this committee: Jeff Labonté, director general, energy safety and security branch, energy sector; Terence Hubbard, director general, petroleum resources branch, energy sector; Joseph McHattie, legal counsel; and Christine Siminowski, director, energy safety and security branch, energy sector.

Welcome to all of you. We are looking forward to the presentation, after which, as usual, we'll go immediately to questions or comments from the members on this legislation.

Please go ahead with your presentation as you see fit.

**Mr. Jeff Labonté (Director General, Energy Safety and Security Branch, Energy Sector, Department of Natural Resources):** Thank you very much, Chair.

Thank you, committee members, for the opportunity to come to speak to you about this particular piece of legislation which is in the House and which I think has received a fair degree of good debate and discussion. We welcome the chance to hopefully address any questions and comments you might have, and if we're not able to do so today in person, we'll do so in writing if we have to afterwards.

I have a brief set of remarks that will probably take about two minutes to run through, and then there's a PowerPoint presentation. I think it's in all of the binders, and we've had extra copies distributed. I'll probably just focus on a few highlights to leave as much time as possible for comments and questions. I recognize that some of you participated in the briefing that we had earlier in the year in anticipation of today.

First of all, I'd like to welcome my colleagues and acknowledge their participation and expertise.

Through the recent introduction of the pipeline safety act, the government is taking some action to demonstrate its commitment to both the safety of Canadians and the environment. This ongoing commitment is part of the government's plan for responsible resource development, and this particular piece of legislation builds on other pieces of legislation that have been tabled in the House and several that have passed.

I will perhaps do a quick *survol* of where we situate ourselves with federal pipelines.

Pipelines are an area that is managed by both the provincial governments and the federal government. Canada has about 825,000 kilometres of pipelines throughout the country. The federal government has responsibility for some 72,000 to 73,000 kilometres that cross both international boundaries and provincial boundaries, which therefore make them federal jurisdiction. The regulator for the federal government is the National Energy Board.

Through those pipelines, on an annual basis some 1.3 billion barrels of oil and petroleum products are shipped between producers and warehouses, refineries and consumers. At the same time, about five trillion cubic feet of gas are piped across the country to different hubs, different distribution points, and then ultimately to consumers, both in industry and to Canadians as individuals.

The NEB pipelines have a fairly strong safety record. The government will regularly point out that 99.999% of crude oil and products arrive safely to their destination, and that's on a regular running basis over the last five-year period. While the safety record is strong, we must, of course, continue to strive to have as few and possibly zero incidents as possible to ensure that Canadians are protected and the environment is protected as well.

Bill C-46 implements a number of measures focused on world-class pipeline safety under the pillars of prevention, preparedness and response, liability and compensation. Prevention focuses on trying to ensure that incidents don't occur. Preparedness and response means ensuring that companies are ready and that Canadians are confident and assured that companies and the regulator are prepared to respond should incidents occur. Liability and compensation means ensuring that Canadians are protected from the costs and damages that might flow from an incident, should one occur.

Bill C-46 focuses on and strives to ensure that our pipeline safety system remains world-class and is consistent with Canadians' expectation for energy transportation and protection of the environment.

I'd like to take a few moments just quickly looking at the deck to illustrate a number of specific elements, and then, of course, we'll turn it over to the chair and welcome questions from committee members.

[*Translation*]

There are two aspects to our presentation. First, we would like to see amendments to the bill concerning the

● (1540)

[*English*]

National Energy Board Act as well as consequential amendments to the Canada Oil and Gas Operations Act.

To give some background, the Minister of Natural Resources is responsible for the National Energy Board Act and shares responsibility for the Canada Oil and Gas Operations Act with the Minister of Aboriginal Affairs and Northern Development, as there's a separation between north of 60 degrees and south of 60 degrees vis-à-vis energy development activities.

I will move on to slide 4, emphasizing a number of key prevention elements included in this particular bill. New sentencing provisions are in place for damages to the environment. There's an authority for the Governor in Council to implement consistent standards for pipeline monitoring and emergency response. There are amendments to damage prevention regimes to seek to have alignment and harmony with the provinces' damage prevention regimes. At the same time, there is clarification of audit and inspection powers for the National Energy Board. Those are for pipelines, and at the same time, since the board's act also provides for power lines, they extend to include power lines under their jurisdiction.

In terms of preparedness and response, slide 5, companies operating pipelines will be required under the new legislation to hold sufficient financial resources to cover any potential costs associated with an incident. Set in the act is that it would be \$1 billion for major oil pipelines and regulations, at lower levels for other classes of pipelines to be developed under regulation. Companies will also be required to hold a minimum level of accessible financial resources to ensure an immediate response. This is sometimes referred to as cash on hand or cash available for a response, should it be necessary.

At the same time, the act will provide authority for the board to take control of spill response in exceptional circumstances where a company may be unwilling or unable to do so.

Finally, the act provides the NEB the authority to compel reimbursement of costs for spills incurred by governments, individuals, or communities.

In terms of liability and compensation, slide 6 in our deck, there is explicit reference in the act to the polluter pays principle. There is an inclusion of a new measure to provide no fault or absolute liability to a prescribed amount in addition to the existing unlimited liability when companies are at fault or negligent in the event of an incident. Again, the absolute liability amount is set at \$1 billion commensurate with the financial responsibility requirements for major oil pipelines and will be set at a lower level for classes of pipelines to be established in regulations.

There is authority to establish a tribunal should the government ever need to authorize the NEB to take control. The tribunal will be provided as a quasi-judicial body to assess and award damages in exceptional circumstances for those who may be impacted by an event, and of course, in the end, the NEB would be provided the authority to recover said costs from the industry as a whole in an exceptional circumstance to ensure that taxpayers are not responsible for the costs.

On slide 7, I would draw attention to some additional amendments that are being made to the act for purposes of administrative efficiency, as well as transparency, including things such as: legislated timelines for Governor in Council decisions on export licences; elimination of Governor in Council approval for the name changes in pipeline certificates and transfers; and a number of things such as eliminating the mandatory retirement age for NEB members to be consistent with the Canadian charter.

We're certainly delighted to be here today and look forward to addressing your questions and comments, and certainly listening to the discussion, and would welcome that at this point, Chair.

Thank you very much, everyone, for your attention.

**The Chair:** Thank you very much for your presentation.

We'll go directly now to questions and comments.

In the first round we have Mr. Trost, followed by Monsieur Caron, and Ms. Freeland, if you would like, we'll go to you then for seven minutes, and welcome to our committee today.

We're starting with Mr. Trost for up to seven minutes.

**Mr. Brad Trost (Saskatoon—Humboldt, CPC):** When you talk to the general public often the first thing they ask about is abandoned pipelines. Could you clarify for this committee the current situation when pipelines are abandoned, not just for companies that currently exist, but for companies that go bankrupt? Mines have been abandoned by bankrupt companies.

Does this legislation affect that situation in any way?

**Mr. Jeff Labonté:** Thank you for the question.

Currently, under the National Energy Board Act, a pipeline certificate holder can apply to abandon a pipeline and the board will hold a hearing process and determine whether or not a pipeline may be abandoned and will issue a certificate for abandonment. At that point the federal government and the National Energy Board's

responsibility would end and the pipeline would be abandoned in place.

Typically, industry may pursue options as to how to deal with abandonment. They may take the pipeline out of the ground, but more often than not, pipelines are filled with sand or cement or some other inert substance that would simply leave the pipeline in place.

• (1545)

**Mr. Brad Trost:** The question from the general public often is if a company is bankrupt, who is there to do any of the necessary back work?

**Mr. Jeff Labonté:** In this particular circumstance it falls into a mix of things. My colleague from Justice might contribute to my answer more fully from a legal perspective.

From a practical perspective, it depends on the nature of what issue might come about. If a company were bankrupt and no longer existed, and its pipeline had been abandoned, it would become a situation of provincial jurisdiction, perhaps as a disturbance of an environmental nature, for example, if something had caused damage. There might be a disturbance of a different nature.

The National Energy Board at this point in time has been pursuing a fund to look at how to manage the abandonment that might occur, which may provide some protection against what you are explaining could potentially happen.

Bill C-46 provides clarity that, under the National Energy Board Act, pipeline companies will be responsible for their pipelines even after they're abandoned, up to the point at which they're removed from the ground. Should a pipeline be abandoned and left in place, the company will be responsible for it in perpetuity until the pipeline is removed, and it must give provisions to the board to ensure there's adequate and appropriate funding to accommodate that should the pipeline company cease to exist in the longer term.

It makes explicit and clear that abandoned pipelines remain under federal jurisdiction, and that companies remain responsible and liable for those pipelines.

**Mr. Joseph McHattie (Legal Counsel, Department of Natural Resources):** Thank you very much for the question.

Indeed, this act clarifies that abandoned pipelines stay within federal jurisdiction until they're completely dealt with.

There was also a question about what happens when a company goes bankrupt. In those cases, because there's no backstop, there's a chance that none of the costs of taking out the pipelines or dealing with them will be able to be recovered.

**Mr. Brad Trost:** In that case the cost would ultimately be borne by federal or provincial authorities.

**Mr. Joseph McHattie:** That could well be the case.

**Mr. Brad Trost:** Looking at the \$1-billion limit—and I'm going to get the limited versus unlimited wrong here because I'm not a lawyer, but you understand what I'm saying—how is that number arrived at, first of all? Second, how does that compare to other countries that we might be competing with? We're not directly competing, but I know we always want first-in-line world safety standards. We're also competitive and we don't want to put our oil producers at a disadvantage if we don't have to.

How is that number picked? What are the costs associated with that? How will that advantage or disadvantage our industry in comparison with industry in other jurisdictions?

**Mr. Jeff Labonté:** That's a great question. I appreciate the question.

We did a fair bit of analysis and certainly looked at a whole bunch of factors when establishing the proposed limits that are included in the bill. We took into account an analysis of the historic incidents and the number of incidents that have occurred and have involved pipeline spills. We looked at current and proposed projects. We looked at existing pipelines, the volumes they carry, the nature of the goods they carry, and the exposure they might have to different scenarios of land, property, and whatnot.

We looked at other jurisdictions as well, so as your benchmark would say.... We certainly recognize that to our south in the United States there is the example of the Enbridge incident in Kalamazoo, Michigan, where there was a rupture and just shy of 20,000 barrels leaked into the Kalamazoo River, I believe. The cost of cleaning up that spill is in the order of a billion dollars. I think it's about \$1.1 billion or \$1.2 billion, depending on which dollar you're looking at and what day you're looking at. That particular cost would be, I think, the high-water mark, if you will, in terms of analysis we've conducted.

We looked into the records of NEB hearings and different projects that are taking place. Certainly, the northern gateway panel, as an example, had established a \$950-million limit as the terms of fiscal capacity expected of the northern gateway partnership project. That was a mix of cash, insurance, and asset requirements.

We looked at the United States, Norway, Australia, and other countries around the world that we would consider peer jurisdictions. In the U.S., the methodology for looking at oil spills is an oil spill fund. An oil spill fund has an upper limit of \$1 billion per incident, so should an incident occur and a company is not able to deal with the incident adequately, there is up to a billion dollars of coverage that's funded.

In establishing our assessment and liability limit, we looked at all of those factors and felt that the billion-dollar amount was an adequate amount given (a) our comparators with other jurisdictions, and (b) the number of incidents we've seen and the incidents we've seen in terms of incidents around the world, and certainly what was established as a benchmark in the northern gateway scientific hearing, which had testimony from various experts from many jurisdictions. That was one part of it.

The second part of it was to look at and compare our world in terms of liability as it relates to liability related to negligence and fault and to liability as it relates to absolute liability. Certainly when

we look at the Canadian context, we have several examples in statute around this particular domain of natural resource development where we see absolute liability, in which the entity that's responsible for the activity is automatically responsible in the event of something going wrong, regardless of fault or negligence. We see this in the offshore under Bill C-22, which has passed. We've seen it in the nuclear sector. We see it in the Fisheries Act. We see it in a number of places.

Not only did we establish the billion-dollar limit, but we also proposed—and this is certainly included in the legislation, as you see—the notion of absolute liability, which removes the arguing and entanglement about who's responsible for what and what degree of responsibility there is. It becomes the responsibility of the operator. After everything is settled and sorted out, if you will, the operator can then pursue the legal routes to deal with who may be responsible beyond themselves, whether it was a contractor or a third party.

Certainly, when we established the billion dollars, we worked fairly extensively at looking at a number of areas and came to a conclusion. I think I have covered most of what your interest was, and if there are more questions in this area, I'm happy to take them.

• (1550)

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

I want to congratulate Mr. Trost and his wife on the birth of their first child, Isabel, in the past couple of days.

[*Applause*]

**The Chair:** She's cute. She is a darling.

Go ahead, please, Mr. Caron.

[*Translation*]

**Mr. Guy Caron:** Thank you very much, Mr. Chair.

I thank the witnesses for being here with us today.

Most of the questions I will be asking will be about the impact of ground disturbances on agriculture.

What poses a problem in the legislation is the complexity of the exclusions and the conditions of exclusion in the definition of ground disturbances. Certain plants have very deep or widespread root systems, but do not necessarily cause damage. Take alfalfa, for instance. This plant may measure several metres. However, there are certain limits that are set in the legislation. I refer you to the second paragraph on page 3, clause 5.

Here is my first question: how will the exceptions in the act regarding the impact of ground disturbances be applied?

**Mr. Jeff Labonté:** Thank you for your question. I would like to take a few minutes to look at the context of the question you have asked.

**Mr. Guy Caron:** Of course.

**Mr. Jeff Labonté:** You referred to clause 5?

**Mr. Guy Caron:** It is at tab 5 in the 177 pages of explanations. The third page discusses ground disturbances exclusively.

Perhaps I could summarize it briefly while you are looking for the reference.

The ground disturbances mentioned in the legislative provisions do not include ground disturbances caused by activities authorized by regulations or orders referred to in section 112, i.e. cultivation that is less than 45 centimetres deep. So cultivation that is less than 45 centimetres below the surface of the ground, or any other activity to a depth of less than 30 centimetres that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed, are excluded.

These are provisions that aim to set out a series of conditions that would cause some cultivation to be excluded or included with regard to ground disturbances and pipeline safety. Have I given you some idea of the context?

I have several questions on this. How will these exceptions be monitored and who will do that? Why was a maximum depth of 30 centimetres included in the bill rather than being determined in the ground-related regulations? I will begin with those two questions.

• (1555)

**Mr. Jeff Labonté:** Thank you for the question.

Perhaps I could answer, but I would like to make a clarification first in connection with your question. Perhaps it should be addressed to my colleagues from the National Energy Board, because they are responsible for anything involving verification.

Generally, in a policy context,

[English]

the description of the ground disturbance and the conditions around ground disturbance would be considered when the board would hear the application for abandonment.

Should the pipeline that was proposed to be abandoned be in an agricultural area, the board may determine the conditions to require a further depth of requirement as a condition of abandonment versus the conditions related to what might be in a non-agricultural area or a rural area, or an area of forested cover, as it might be.

The considerations as to what was acceptable ground disturbance vis-à-vis an abandonment process would be taken into consideration during an abandonment hearing and may form conditions of abandonment. That's the first part of the answer.

On the question of who would verify and continue to monitor, it would be the role of the National Energy Board to continue to do so. Certainly, some potential landowner who might be impacted by an abandonment order would have knowledge of that order. It would be the board's responsibility to then communicate with that landowner vis-à-vis what would be conditions of limitations, if you will.

Generally speaking, the purpose of the ground disturbance is to establish a reasonable amount of land that may be disturbed before

the safety of the individual disturbing the land might come into question.

[Translation]

**Mr. Guy Caron:** That is why farmers are worried about some provisions, but I will wait until representatives of the board are here with us to ask the rest of my questions on this topic. However, I have another question that might be more in keeping with your expertise.

When the consultation was held on the pipeline crossover regulations, the Union des producteurs agricoles du Québec had already recommended that a provision on absolute responsibility be withdrawn. Why did you not apply that recommendation?

**Mr. Jeff Labonté:** I don't know if I understand your question exactly. What do you mean by the word "crossover"?

**Mr. Guy Caron:** A consultation was held previously on regulations about the crossover of pipelines. One of the recommendations of the Union des producteurs agricoles du Québec had to do with the matter of absolute responsibility. The UPA recommended that the provision on absolute responsibility be withdrawn. Why was that recommendation not implemented? If you do not have the answer now, you could provide it later.

**Mr. Jeff Labonté:** Yes, perhaps, because I do not exactly know the answer. Absolute responsibility is mentioned in the bill, but I don't know what the context is exactly regarding crossovers.

This may be the starting point for a company which is responsible for a pipeline or a refinery or another business of that type. I don't know, but we are certainly going to do some research in order to be able to answer your question.

**Mr. Guy Caron:** Yes, thank you very much.

Clause 5 of the bill gives the board the power to inquire into any accident involving an abandoned pipeline. Through that clause and the following clauses, the National Energy Board is given great latitude regarding the triggering of these investigations, their scope and the criteria on the publication and distribution of the results. This is on page 9, tab 5.

I would like to know what the specific criteria would be that would allow the board to launch such an investigation. Are those criteria public at this time or, if not, will they be eventually? How would the National Energy Board inform the public or Parliament of its conclusions?

• (1600)

**Mr. Jeff Labonté:** Thank you for the question.

Generally speaking, the National Energy Board carries out inspections and verifications based on the activities of companies, their history, the risks involved, the questions that remain unanswered, as well as certain incidents or activities of the company. For instance, after the Kalamazoo River spill in Michigan, which involved the Enbridge company, the board inspected the operations centre. Inspectors examined all of the aspects of protocols, activities, policies and so on.

This is based on questions asked by the members of the National Energy Board. That said, if the board examines a given issue, the protocol requires that it publish the results and its report. However, once again, it would be up to my colleagues from the National Energy Board to verify what their protocol is exactly in the case of an investigation, as well as its conclusions.

Here, however, we have to examine the bill with additional precision, to see what the responsibilities and powers of the National Energy Board are. We are now working in this area and there is a great deal of activity. So we have to see what the bill says.

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

[*English*]

Ms. Freeland, for seven minutes.

**Ms. Chrystia Freeland (Toronto Centre, Lib.):** Thank you very much, Mr. Chair.

The dominant fact today about the oil industry and therefore pipeline safety is the fact that it's experiencing a sudden and rather deep downturn.

Do you have any concerns that the economic pressures the oil industry is facing might have an impact on pipeline safety and on the ability of companies to meet some of these financial demands laid out in the act?

**Mr. Jeff Labonté:** First, thanks for the question. It's a helpful one.

The oil and gas industry is a long-term industry. Certainly it moves with ups and downs like many industries, but most of the natural resource industries have booms and bottoms, and they move around in different aspects.

When we talk about pipelines, generally a pipeline project is conceived, planned, organized, evaluated, and studied usually for a period of several years before it is constructed and operated. Then it usually operates over a period of several decades.

Certainly, from a safety point of view, looking at that long rhythm and that long horizon, making sure that companies are financially viable, financially sound, and financially responsible before and during construction, during operation, and in the longer term, is part of the interest and purpose of the bill.

The other aspect around pipelines, the industry and the economics is that there is a great deal of variation and fluctuation around the producer community and how producers pay tolls for the movement of their goods using pipelines. Generally speaking, pipeline companies like to have many customers interested in using their transportation networks and it's a very competitive discussion about whether a company buys a specific amount of volume or whether it buys it on a spot basis as customer demand surges. There are a number of variables going on.

The view we have around the economic aspects is that they are certainly going to have costs associated with them, but that the industry is prepared to and should be able to cover these.

**Ms. Chrystia Freeland:** Thank you.

As I understand it, the bill would set up a consolidated revenue fund that would be available to pay for claims that a company is unable to satisfy in the event of a catastrophic spill. Is that right?

**Mr. Jeff Labonté:** Sort of.

**Ms. Chrystia Freeland:** Can you say how it's the case and how it's not the case, and give us some insight into the thinking around it?

**Mr. Jeff Labonté:** Sure.

The bill provides first-hand a provision that the National Energy Board could take control of an incident response and compensation of damages to any harmed parties. That provision doesn't exist in the National Energy Board Act today, and it would propose that it would be implemented based on the ability of the Governor in Council to designate a company. A designation would follow a sequence of steps, where a company might suffer an incident, and the company might not respond to the board's orders to clean up the incident or to behave in a certain way, and the board might then make a recommendation to the Minister of Natural Resources to designate the company as unresponsive. The Governor in Council would then consider designating a company as unresponsive, and then the board would be provided the authority to act.

Bill C-46 provides that the Minister of Finance may provide funds from the consolidated revenue fund to the board to pay for the cleanup and the response. In the event that damages are suffered beyond the cleanup and response, a tribunal may be established to provide adjudication and review and assessment of damages and provide compensation for parties that may be harmed. I use the word "may" in a number of choices because there are the possibilities that an incident occurs and there aren't many parties who suffer damage, in which case setting up a tribunal would be fairly extraordinary and heavy-handed and not necessary. It may be that an incident, should it occur, could affect more than one person or several parties, in which case adjudication through a tribunal would be a reasoned response.

The consolidated revenue fund reference is to the government's account, if you will, managed by the Minister of Finance, and would be exercised in that way only when a company would be designated as unresponsive or unwilling.

• (1605)

**Ms. Chrystia Freeland:** Where does the money for that fund come from?

**Mr. Jeff Labonté:** It would come from the Ministry of Finance, the Government of Canada.

**Ms. Chrystia Freeland:** The people of Canada, right?

**Mr. Jeff Labonté:** Taxpayers, correct.

**Ms. Chrystia Freeland:** What is the thinking behind there ultimately being a public liability?

**Mr. Jeff Labonté:** A public liability in what sense?

**Ms. Chrystia Freeland:** Behind the taxpayers ultimately footing the bill in these extreme circumstances.

**Mr. Jeff Labonté:** In the extreme circumstances, the policy logic behind the taxpayers providing a backstop to cover this, one, would be to ensure that the individual landowners or the individual citizens or any other parties who might be implicated would not be held financially liable; and two, that the response capability is provided for and the dollars are provided. The act provides that, should the government advance funds to the board to cover these things, it would be cost recovered from industry. Taxpayers would be held harmless, if you will, and ultimately, the industry as a whole would pay for the costs associated with an incident or any damages that might be provided and that, again, taxpayers would be protected.

**Ms. Chrystia Freeland:** How long would it take for that cost recovery to happen?

**Mr. Jeff Labonté:** That's a great question. I guess the answer would be it depends. To be completely straightforward about it, it depends on the nature of the incident and it would depend on the amount of money involved. If you, for example, imagined an incident that cost half-a-billion dollars, if we move 1.3 billion barrels a year, if the cost to industry was 10¢ on a barrel, then you could compute that it might take so many years for that to be recovered, and the board would recover it on charges per barrel moved by the industry so that the larger players paid more and the small players paid less. We would need to do a financial analysis. The law provides for recommendations being made from the Ministry of Natural Resources to the Minister of Finance on what would be a reasonable period of time, interest and carrying charges covered, and all the elements of ensuring that the government was held harmless, recognizing the capacity of the industry as a whole to cover that cost, over what period of time.

**Ms. Chrystia Freeland:** Can you give us any sense of what the considerations would be that would go into figuring out a reasonable period of time for industry to pay back Canadians?

**Mr. Jeff Labonté:** Sure. It would be the extent to which that cost per barrel might impact a company's ability to produce and move things. We don't believe it's an extended period of time. Obviously, at a total of 1.3 billion barrels a year, you can imagine several cents on a barrel over a period of time would accumulate a fair degree of money in a fairly rapid period of time.

**The Chair:** Thank you, Ms. Freeland.

We'll go now to our five-minute round. We'll start with Ms. Crockatt, followed by Ms. Block, and then Ms. Duncan.

Go ahead, please, Ms. Crockatt.

**Ms. Joan Crockatt:** Thank you to our officials for coming in today.

We've gotten into the theoretical, down in the weeds quite a bit, and I'm hoping to bring us back to reality. I'm wondering if you can tell us, what the average cost of a spill in Canada is, realizing that they are very rare and don't happen often.

•(1610)

**Mr. Jeff Labonté:** Sure. Thank you for the question.

Just in terms of quick facts, for federally regulated pipelines, on average, since 2008 to present—so the last seven years—there have been 6.7 incidents per year in which oil has been spilled. The average volume released was about 1,200 barrels of oil. The average

amount of that oil that was recovered was 96%. The average cost of the spills, based on a fairly broad average cost per barrel, is about \$3.7 million, all of which has been covered by industry players; none have left those costs to anyone to clean up or to pay, other than the company.

**Ms. Joan Crockatt:** The average cost is \$3.7 million.

**Mr. Jeff Labonté:** Correct.

**Ms. Joan Crockatt:** This bill is allowing for \$1 billion. Is that correct?

**Mr. Jeff Labonté:** In absolute liability.

**Ms. Joan Crockatt:** In absolute liability.

**Mr. Jeff Labonté:** That's correct.

**Ms. Joan Crockatt:** What is the highest cost spill in terms of cleanup costs that we've actually run into in Canada?

**Mr. Jeff Labonté:** In terms of the highest cost that we're aware of, I will give you a ballpark. We don't have the exact figure because it's not a federally related one. There was a provincial spill in Alberta, near a lake and a water body, that was in the order of \$70 million to \$75 million.

**Ms. Joan Crockatt:** That is the highest cost that we've seen in Canada. With \$3.7 million being the average and the highest cost being \$70 million, why are we moving to a \$1-billion absolute liability here?

**Mr. Jeff Labonté:** I think it's a fair comment. I appreciate the comment and the question.

We benchmarked and looked at, as I said, a range of different circumstances. We certainly wanted to provide for the potential...and ensure that companies were capable of carrying adequate resources in the event that there was a fairly sizable incident. Despite the history and the enviable record we have, despite the facts and the data that present that the numbers are fairly small, the law provides for \$1 billion in absolute and unlimited liability when at fault and when at risk, providing, I think, an adequate degree of protection in terms of what we see.

When we compare ourselves globally, we feel quite confident that the proposed number in the amount of liability that's being presented in the bill is what one would expect in terms of a world-class regulatory system.

**Ms. Joan Crockatt:** Could you tell us where we are positioned now, just so Canadians know?

I think this bill is in large measure about confidence, perhaps absolute confidence, that we're seeking from Canadians in the event of a spill. Can you tell Canadians what their confidence level should be with this bill in place, and where does Canada sit in terms of the world, should this bill pass?

**Mr. Jeff Labonté:** I would start by saying that I think we have an exceptionally strong pipeline safety system in Canada. The data demonstrates that. I think I've just walked through it with you.

Certainly there are still seven incidents a year, on average. Those are seven too many, I think from anybody's perspective. How do you get to zero? You put in place a lot of measures that make sure that people are doing their very best to ensure that pipelines are safe, that they're operated properly, and that in the event something does occur, people are prepared.

In terms of where we stack up globally, to our knowledge no other country in the world has an absolute liability regime for pipelines, so this is unique to Canada. At \$1 billion we compare quite favourably with the United States. We compare quite favourably with any other country in the world, that we've established, and certainly we benchmark against what has been the most expensive incident in the history that we're aware of. We also have the minimum financial resource requirements. The United States, the United Kingdom, Australia, and other countries that we would consider to be peers do not have those requirements in law. We have proposed the ability for regulators to respond, something that you would see in other peer jurisdictions that provide this. We have it so that the regulator can compel companies to pay communities, individuals, citizens, governments, and aboriginal groups that may be impacted. Neither the United States nor the United Kingdom has such measures in their statute.

**Ms. Joan Crockatt:** Is it fair to say we have a gold standard here?

**Mr. Jeff Labonté:** I'd say that we have a world-class system, and I use the words carefully, because world-class, I think, has different meanings to different people. I'd say there are elements of our system that I think are world-leading, in the sense that other countries don't have the same measures, and we feel that they're quite strong. At the end of the day, however, we need to have a pipeline safety system that Canadians can believe in, that industry can work within, and that industry can be held accountable for, and we need to have a regulatory framework that's strong.

• (1615)

**The Chair:** Thank you, Ms. Crockatt.

We'll go now to the Parliamentary Secretary to the Minister of Natural Resources, Ms. Block.

Go ahead, please, for up to five minutes.

**Mrs. Kelly Block:** Thank you very much, Mr. Chair.

I join my colleagues in welcoming you here today. I always appreciate hearing the testimony of our officials and appreciate, additionally, the briefing that we had a number of weeks ago on this bill.

A very relevant and current topic is proposed pipelines such as Keystone XL that have already been approved but are not yet built. I'm wondering how this act would affect this pipeline that's already been approved but is not yet built?

**Mr. Terence Hubbard (Director General, Petroleum Resources Branch, Energy Sector, Department of Natural Resources):** The proposed pipeline safety act will apply to both existing and future proposed pipeline projects. While the NEB has already reviewed the proposed Keystone XL pipeline and has recommended a number of terms and conditions which the cabinet has adopted and has put in place regarding the construction of the pipeline, the additional requirements, including the absolute liability

requirements, will apply to these pipelines that are already approved or already constructed and in the ground.

**Mrs. Kelly Block:** Keystone XL would operate in more than one province, and I understand that the act modernizes and harmonizes provincial regimes. Could you describe for us in more detail what has been done and why it is important in terms of damage prevention?

**Mr. Jeff Labonté:** I'll start and I'll lean on my colleague as well to join in this one.

The provision in the act related to harmonizing damage prevention regimes is really a preventative aspect of the regulatory framework that provides the legal frame for landowners and people who might be doing things around where pipelines exist and how they might operate. Those people range from a municipal works department that might have to do some road work around a pipeline to a farmer or a landowner who might have a pipeline right-of-way in part of their property area. In some instances the most effective way of developing pipelines is to have a right-of-way containing multiple pipelines, some of which might be federal and some of which might be provincial. Certainly for owners of the pipelines as well as owners of the land, each jurisdiction has its own rules as to what is acceptable and what's permissible to avoid creating and having damages. Some of those have to do with things that are as simple as the depth of the soil. There was a question earlier about what activities can occur at what depth to ensure they don't occur at the same level at which a pipeline might be found. Some have to do with the area in which an activity might take place, so the person who wants to do the activity has to notify the pipeline company so the pipeline company can verify which activities can occur in which zone. These are referred to as safety zones.

All of these elements are included in the damage prevention regulatory framework. Our proposal in the law is to work more closely with the provinces to harmonize the degree to which these damage prevention activities are similar and compatible such that there is less opportunity for confusion or less opportunity for difference between the regimes federally and provincially. Federally, we work to ensure that things are as safe as possible and work together, but the reality of having many different provincial jurisdictions is that the jurisdictions are different. We want to be able to work at the level of the board and at the level of the regulatory framework to ensure that the standards are as compatible as possible and that we can provide as much clarity as possible to ensure that the damage prevention regime is consistent with the purposes of the act and at the same time doesn't create any potential risks.

**Mrs. Kelly Block:** I understand that this legislation is part of our government's ongoing commitment to safety and environmental protection through its plan for responsible resource development. I know that you referenced that plan in the summary of your data. You also spoke to the current safety record of federally regulated pipelines. I'm wondering if you would tell us how this particular piece of legislation fits into a responsible resource development plan.

• (1620)

**Mr. Jeff Labonté:** I'll start and then I'll have my colleague join in, because he actually worked on the RRD initially.

The responsible resource development plan is a series of efforts under way to ensure that there are adequate and appropriate world-class safety regimes around the regulatory systems for our resource development activities, whether those are offshore oil and gas development and the Energy Safety and Security Act, nuclear energy development, whether they're the pipeline safety act here, the marine activities around my colleagues from the Ministry of Transport, or the recent amendments and proposals being put forward on rail related to rail transportation.

From a broad perspective, resource development starts with the regulatory framework around the projects, around the investment frame around those projects, the timelines related to those, the community engagement, the aboriginal consultations that are meaningful and appropriate for the circumstances, and then the environmental protection and the consideration of the environmental assessment. On a broad scale, if you look at those activities, and we have one in which we establish collectively from the federal government perspective as strong a regime as possible for resource development, the next step is to ensure that our regulatory system for moving those resources and handling those resources is equally world-class and responsive, and appropriate for the circumstances.

**The Chair:** Thank you, Ms. Block.

We're going to have to wait for the rest of the response, if you want to fit that in somewhere.

Ms. Duncan, for up to five minutes, please.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** There is a lot in this bill, and frankly I think we could use you here for several days. There are a lot of detailed questions to ask as well, but I'm going to try to combine them. I think when we have you back here for clause-by-clause study, it's going to take us a lot more than one meeting because of that.

One of the things that has puzzled me and a lot of the people who reviewed this bill is the government starts out with the proposed section 48.11 strident principle, the polluter pays principle, is now going to be applied to pipelines, yet the whole rest of that part of the bill sets about diminishing liability. We're left very confused as to what actually the government is intending to set forth. It looks pretty clear by the provisions of the bill that, in fact, there is no intention to have absolute liability. One example is the decision to override the Fisheries Act, which of course imposes absolute liability.

We raise other questions, as well as what my colleague from the Liberal Party raised, essentially, on how the other part of the bill then shifts liability to the public. Related to that, I'm left with a number of questions, and that's mainly because, as you go through the bill, a lot

of information about how this bill is going to be applied is going to be by yet-to-be promulgated regulations. That applies in almost every part of the bill, including the determination of the maximum liability, which is in fact not a billion dollars. It could be an amount to be set by regulations.

My first question right off the top is, are you in the process right now of promulgating all these regulations under the bill? Will those be reviewed by the broader public?

**Mr. Jeff Labonté:** Thank you for the questions.

I'll try my best to answer a number of them, and stop me and tell me which ones I miss, because I was trying to frame that.

On proposed section 48.11, the polluter pays principle, it's just good practice from a jurisprudence perspective to draft in the polluter pays principle, which exists in common law. I'm not a lawyer, but I think that principle has existed for some time and the act was originally written in the 1950s, at which point the polluter pays principle wouldn't have been expressed in statute. My colleague from Justice can certainly elaborate further.

With respect to the comment about the Fisheries Act, I believe that we are referencing the section of the Fisheries Act that has absolute liability for commercial fisherpersons, persons who are involved in commercial activities related to fisheries, which would be a fairly defined and unique class of citizens, if you will. I don't make my living from harvesting fish, so I would not be eligible for unlimited absolute liability under the Fisheries Act, whereas under the pipeline safety act I would, if harmed, have the ability to recover up to a billion dollars in damages.

Should the act pass, it provides Canadians protection broadly. However, in the event that there was an incident in a theoretical context in which the Fisheries Act may be implicated, I believe, and my Justice colleague can comment on this, it's the decision of the federal crown prosecutor to decide which act they would use to prosecute or to pursue a party, should they be harmed.

Sorry, I believe there's a question there of making sure that there wasn't overlap and double counting, if you will, or double—

• (1625)

**Ms. Linda Duncan:** My question doesn't deal with criminal liability. I'm talking about civil liability.

**Mr. Jeff Labonté:** Correct.

Go ahead, Joseph.

**Ms. Linda Duncan:** It has nothing to do with prosecution.

**The Chair:** Go ahead, Mr. McHattie.

**Mr. Joseph McHattie:** Mr. Chair, the question here is about the diminishing of liability by not allowing recovery under the Fisheries Act. What this bill proposes to do is that if there is any loss caused by a pipeline spill, and one of those losses is damage to a fishery, the recovery must be done under the NEB Act.

That's the main point and under the NEB Act you would have an absolute liability up to a billion dollars.

The act also provides that the company's also liable for any amount above that. It's just that there's no backstop.

**Ms. Linda Duncan:** Thanks.

My bigger question is about where we are with the regulations, including that provision about the billion dollars or what's set by regs.

**Mr. Jeff Labonté:** The act provides the ceiling of a billion dollars for a major oil pipeline of at least 250,000 barrels per day, if it's individually or an aggregate, and then provides a regulation-making authority.

We do not have the regulation-making authority today to establish the classes until the bill passes the House.

We have begun our work to look at the regulatory aspect of how we would establish classes beneath the 250,000 barrels a day of oil and other types of energy commodities. Roughly speaking, we would think through having a class of pipelines for major oil pipelines, which is in the act, perhaps oil pipelines, more broadly gas pipelines, and then other commodities regulated by the National Energy Board.

The development of those regulations will follow the regular process of discussions and analysis with communities and experts who have an ability to contribute. There would be a pre-publication of those regulations that would provide for public comment, public review, and the duty on the government's part to respond to those comments and questions in writing upon final publication.

All of the regulations that are referenced in here beneath the billion-dollar aspect would be made public and would have an opportunity for public engagement.

**Ms. Linda Duncan:** Thanks.

**The Chair:** Thank you, Ms. Duncan.

We go now to the next three in the five minute round.

Mr. Leef, followed by Ms. Charlton, and then Ms. Perkins.

Go ahead, Mr. Leef, for up to five minutes.

**Mr. Ryan Leef (Yukon, CPC):** My apologies if we covered this, but I don't think we did.

I see the act effectively makes companies liable for contractors as well and not just actions of their own. How is that different from what's currently in place?

**Mr. Jeff Labonté:** Thank you for question.

Mr. Chair, I think this simply clarifies the existing law. In ordinary civil law an agent can be liable to the principle for any of their misdeeds. This is simply a way of clarifying that existing law.

**Mr. Joseph McHattie:** The policy principle at play here would be that the company that's responsible for the pipeline certificate, the operator of the pipeline, would be responsible for any contractors or any parties working for them to avoid the situation of "you were working for me, so I'm not responsible for your actions, so therefore you're the person who's responsible".

It attempts to clarify that there's no ambiguity on this particular point even though that already exists in elements of common law.

**Mr. Ryan Leef:** Right. Perfect.

That provides a fair bit more clarity for the Canadian public. They know they're not going to get caught in a position of "your fault, not our fault" and they can sort out their own internal agreement on how they establish assurances and contracting terms, but at the end of the day it's the pipeline operator that's ultimately responsible.

**Mr. Jeff Labonté:** Correct.

It extends a step further even if you weren't a contractor to the pipeline company.

If you were a construction worker working near a pipeline and damaged the pipeline and caused damages, the pipeline company is responsible even though you weren't working for the pipeline company and damaged the pipeline and caused harm and costs. The pipeline company would still be under absolute liability and would have to clean up and pay for it.

They could then, after the fact, pursue me as the construction company worker to recover those costs that they might have incurred, but that will happen outside of the NEB Act and under general tort law or the appropriate legal frame.

• (1630)

**Mr. Ryan Leef:** That's an interesting piece. It's not just that they're financially responsible with that absolute liability, but they're also responsible for the cleanup provisions that are embedded in other sections of this bill.

**Mr. Jeff Labonté:** Correct.

**Mr. Ryan Leef:** Ms. Block talked a little bit about some of the potential pipelines. When we're crossing provincial jurisdictions, there's going to be some harmonization, obviously, with provincial regimes that this takes into account.

How complex is that at this point to achieve? Obviously, it's self-evident, but how important is it that we standardize those regimes with pipelines that are moving across provincial jurisdictions?

**Mr. Jeff Labonté:** It's fairly complex. It's more complicated than it seems. The act provides the entry into a broader conversation that will take some time to work through with different jurisdictions. There are nine different jurisdictions that regulate pipelines in Canada. There is quite a bit of discussion to have with different jurisdictions, some of which are quite extraordinary and have phenomenally large numbers of pipelines, some of which have very few.

The degree to which we will work through the harmonization process will take some time and it will depend on a lot of hard work and analysis, and collaboration between federal and provincial jurisdictions.

**Mr. Ryan Leef:** Have any of the provincial jurisdictions right now that have this unlimited liability and billion-dollar cap.... In effect, is this going to up some provincial regime's game and degrade others?

**Mr. Jeff Labonté:** Just to be clear, harmonization will be around damage prevention regulations, not around liability. What's proposed in the bill will only apply to federally regulated pipelines. Provincial pipelines have their own legal regime around their liability.

There are no provincial jurisdictions that have absolute liability and none that have a billion dollars.

**Mr. Ryan Leef:** Is that largely because the federally regulated ones tend to be larger in scale, or is that just more coincidental about where they're transecting and where the product is moving?

**Mr. Jeff Labonté:** Roughly speaking, the federal pipelines tend to be larger, but my colleagues in Alberta and Saskatchewan might take issue with that. There are some pretty big provincial pipelines in Alberta and Saskatchewan.

It's really a function, typically, of how far and how large a network we're dealing with. It's not fair to say the big pipelines are federal and the little ones are provincial. That's not accurate. There are more pipelines in Alberta than there are federally. It depends on how one counts and what types of pipelines....The pipelines that go into your home are literally two inches wide and then there are pipelines that are 36 inches wide. There's quite a bit of variability.

**The Chair:** Ms. Charlton, for five minutes.

**Ms. Chris Charlton (Hamilton Mountain, NDP):** Thank you very much for being here today.

I think what Canadians want from us more than anything is just to ensure that we're developing our resources in a safe and secure way. We all share that goal around the table.

You know that Canadians' confidence in our system isn't exactly at an all-time high, particularly with respect to the transport through tankers, rail, and pipelines. I don't think any of them enjoy the majority support of Canadians. I know pipelines do a little better than tankers and rail, but we have a lot of work to do to get Canadians to feel secure about the way that we're developing and transporting our natural resources.

I notice in the deck you say that the bill strengthens Canada's world-class pipeline safety system by implementing new prevention measures.

I don't actually see very many prevention measures in this bill, save and except I suppose the reference to the polluter pay principle, which I suppose would have a deterrent effect on companies. Apart from deterrence, I wonder whether you could highlight for me what those robust prevention measures are that we find in this bill.

• (1635)

**Mr. Jeff Labonté:** Certainly, the bill provides a number of areas where its focus is on prevention.

For example, the bill provides clarified audit and inspection powers of the NEB, which is part of the monitoring and inspection areas in order to prevent incidents from occurring and trying to

detect practices that may lead to incidents. That would be an example where we would see that.

Updating and looking at the damage prevention regulations.... We've been speaking a little bit about harmonizing safety zones and safety systems, and the methods in which different jurisdictions manage preventing damage to pipelines while they're in the ground and what happens around them. That would be a place where we would hope that the measures provided for—

**Ms. Chris Charlton:** Sorry, that would be in the regulations, right?

As you said, we would hope that might happen, but there's nothing concrete in the bill that would tell me with certainty we have now done X.

**Mr. Jeff Labonté:** The bill provides us the ability to move forward with how we would do that. Today we can't so I would suggest that without the ability to move forward on how to move toward prevention and better prevention, it would allow for that. Certainly the other aspect around bringing greater clarity around sentencing and how we deal with incidents and how things occur are all in the ambit of our efforts, and certainly efforts in the bill attempt to ensure that pipeline companies do their very best and work to do their best.

**Ms. Chris Charlton:** Yes, but that's after the fact, right? I'm sorry, I don't mean to interrupt but we only have five minutes.

All those things in terms of sentences are after the fact. We're hoping that will act as a deterrent, but it's not necessarily an upfront measure that will enhance preventive measures.

Let me go on to a couple of other things. Forgive me for being perhaps a bit cynical about some of the provisions in the bill, because as you said in response to some of my colleagues' questions, the NEB can report that a company is unresponsive. The Governor in Council will consider whether to act. The tribunal may be established, and money may be recovered from the industry. That's a whole lot of maybes, and some of us who came to this place in a very trusting frame of mind I think have lost that trust over the last few years. That's through no fault of yours, but the bill does leave considerable vagueness.

One of the questions I have is that in determining the pipelines that will be impacted by these new provisions, you're dealing predominantly with volumetrics, right? You talk about 250,000 barrels per day. Those are the pipelines that will be covered. Why did you choose to concentrate only on volumetrics? Why not, for example, look at the goods that are being transported and the relative levels of risk that those goods may present?

**Mr. Jeff Labonté:** Thank you for the question. I think it's a good one.

Looking at the analytics, volumetrics is a fairly straightforward way of identifying where you would see the majority of the movement of energy goods. I think the risks associated with a particular product moving through a pipeline vary because pipelines move different products. If we choose to pick product X, Y, or Z, it could be that today they're moved on one pipeline and tomorrow they're moved on a different pipeline. I think associating it with the product is not necessarily a static activity versus the volumetric aspect, which provides a reasoned measure for how things work.

The data demonstrates that six pipeline companies who hold certificates move about 85% of the oil volume in the country and all would be covered under the billion-dollar condition.

**Ms. Chris Charlton:** Okay, that's more above—

**Mr. Jeff Labonté:** If you relate volume to the activity level the activity level is represented.

**Ms. Chris Charlton:** Volume and risk to me aren't necessarily synonymous. Anyway, we'll leave that for another time.

**The Chair:** Ms. Charlton, your time is up.

Mr. Labonté, we've had two or three questioners ask about this issue of what's in the bill versus regulation. Is this bill really any different from the normal? Is there anything different about what's in the bill versus what's in regulation from other pieces of legislation that go before Parliament on a regular basis?

**Mr. Jeff Labonté:** No, it's not any different from most pieces of legislation that establish authorities to provide regulations. Generally speaking, without being entirely disingenuous to Parliament, legislation doesn't get changed very often, and it takes a great deal of activity and attention from parliamentarians, whereas the regulation-making function tends to be a little more responsive to changes that happen in time and over changes in society. Making regulations are equally applicable under the law and equally important, so in no way is the regulation-making function a denigration of an attempt to ensure pipelines are safe, or to ensure that certain things don't happen in a specific way.

Certainly, there's been a fair bit of comment about how the government may or may not choose to do things, and I respect the comment. I'd suggest that certainly in the regulation-making activity there's a fairly broad and extensive public consultation period. Any Canadian and any group or association has the ability to write in and certainly contribute in a public way to the regulation that's being proposed, and the government has an obligation and a duty to respond to that. I would expect we would do that for all the elements that are laid out in this bill.

• (1640)

**The Chair:** Thank you very much. I wanted you to clear that up for the committee.

We'll go now to Ms. Perkins, for up to five minutes.

**Mrs. Pat Perkins (Whitby—Oshawa, CPC):** Thanks to all of you for attending today and presenting. It always brings questions to mind, because it's not our core business. We know that the standards you folks expect are high. They have been met over the years. Your 99.99% success rate with our oil pipelines and gas pipelines is something that I think needs to be celebrated. I'm not sure how that

compares to other jurisdictions throughout the world. I think it would be interesting to know that.

My concern is in terms of your role. Is your role to put in preventative strategies with respect to what you want the pipeline folks to follow? I've just gone through the whole Line 9 pipeline reversal, so I've heard a lot about a lot of things, including Kalamazoo as a comparator.

Is it under your jurisdiction to look at things like the aging of the pipelines, at what point they need to be replaced, and at what point they should be upgraded? Is there any specific requirement for shut-off valves near environmentally sensitive areas? Are those sorts of things all within your purview?

**Mr. Jeff Labonté:** Thanks for the questions and the comments. Those are exactly the kinds of things that we hear about on a regular basis.

The National Energy Board is the regulator that would establish, by looking at the evidence base, the circumstances, and the elements of a pipeline, where the shut-off valves should be and what the conditions of the shut-off valves might be related to the environment, the habitat, or the land base where you find the pipeline.

Obviously, they do risk-based auditing and inspections, so older pipelines get more attention, as do pipelines that have had incidents previously and pipelines that might be around areas that are more sensitive. You'll perhaps be able to ask them when they're here about some of those things more definitively, but certainly from our perspective, setting the legal frame that allows them to do that is what we're responsible for.

**Mrs. Pat Perkins:** Okay. I'm just trying to figure it out. You're Natural Resources and there's the National Energy Board. Who has what authority and where does the communication between you happen?

I'm trying to understand this. Do you say to them that perhaps it would be a good idea and we could enhance the system if we were to ensure that there were shut-off valves near waterways and environmentally sensitive areas and have them consider that as part of their process? I don't know how your system works. Do you get to do that sort of thing?

**Mr. Terence Hubbard:** It is an iterative process. Natural Resources Canada does establish the policy framework under which the National Energy Board operates. As part of that, there's an ongoing dialogue between the regulator and us in Ottawa in terms of that framework and the opportunities to improve that framework going forward.

Obviously, we rely heavily upon the expertise of the NEB in terms of technical matters and how we can strengthen technical aspects of that system going forward. There are a number of different tools with which that can be done: through working through the development of new standards, through new regulations, through legislative changes, or through the NEB's technical review of pipeline matters.

The example of valves in terms of environmentally sensitive areas is a very technical question and issue. The NEB probably could spend a lot of time trying to define the considerations that go into those valve placements, but it does play into their overall safety mandate in determining exactly where those valves should be located in terms of environmental protection and also in determining the risks of creating additional weak spots in the pipeline going forward that could create additional risks of a spill.

There are a bunch of considerations in there, and we work iteratively in terms of ongoing conversation.

● (1645)

**Mrs. Pat Perkins:** Are the National Energy Board folks the folks who actually have the public hearings and meetings with groups? Is it not done by Natural Resources?

**Mr. Jeff Labonté:** It's not done by Natural Resources.

They're an independent regulatory body, so we don't get to encourage them, tell them, or ask them anything beyond what technical considerations they take into account. They decide what they look at and how they look at it, doing it in that quasi-judicial fashion and then determining the conditions under which the pipeline operates.

**The Chair:** Thank you, Ms. Perkins.

We'll go now to Monsieur Caron, and possibly Ms. Charlton, if Monsieur Caron is finished before five minutes, and then Mr. Trost.

**Mr. Guy Caron:** Could you tell me when I'm halfway through my time?

**The Chair:** Sure.

[Translation]

**Mr. Guy Caron:** I would like to go back to what Ms. Charlton mentioned about the lack of precision and the fact that there are a lot of conditional points in the provisions.

I would like more specifically to talk about the pipelines claims tribunal which would be set up by the National Energy Board in the case of a spill, for instance. Mr. Labonté, can you tell me specifically what the criteria would be to justify setting up such a tribunal? In what circumstances would such a tribunal be created? Would it be following a complaint, the launching of legal action, or an investigation?

Can you give us more information about how the decision would be made to establish a tribunal? Would the creation of a tribunal absolutely have to be preceded by the start of an investigation? From the perspective of public interest, what would the difference be between having a case heard before a National Energy Board administrative tribunal and having it heard by a court of justice? Would this make a difference to the guilty businesses?

I am asking all of these questions to find out what the conditions would be that would lead to the creation of such a tribunal.

**Mr. Jeff Labonté:** Thank you for this very important question.

[English]

The act provides for the ability of the Governor in Council to establish a tribunal to adjudicate claims for damages. The first condition that would need to be met would be that the company

responsible that operates the pipeline would be designated as unwilling or unable to respond. The first point would be that there's a situation in which a company is not responding in an appropriate way. That designation is made and then, pending the circumstances as to whether there are damages that may need adjudication, a tribunal would be established.

It's difficult to predict and to say in advance that this circumstance leads to that creation of a tribunal, but it would provide citizens, companies, and communities that might be impacted an ability to have a hearing and a fair representation of their claims for damages. It would also provide an independent tribunal the ability to evaluate those claims, adjudicate them, and provide an award for damages outside of the judicial system.

The bill does not provide, though, that one may not choose to use a judicial system should they wish. It's not one or the other. One can choose to continue through the judicial system should they wish. The establishment of the tribunal is in the circumstances when the government would need such a system because of damages that may be present in an incident.

**The Chair:** Thank you.

Ms. Charlton, you have about two minutes left, two and a bit.

**Ms. Chris Charlton:** Thank you very much. I only need about half a minute.

I'd like to follow up on the provisions of the bill that, in essence, put in effect a three-year statute of limitations. I wonder why you chose the three-year limit. I'm particularly thinking about things like health effects down the road. Some of those, I imagine, wouldn't necessarily manifest themselves particularly quickly.

I wonder whether you could speak to that, where the three-year limit came from.

● (1650)

**Mr. Joseph McHattie:** Thank you very much for that question.

I think establishing a statutory time like that is a policy question that's been directed to the minister. This tries to follow some of the federal legislation, tries to track it.

**Ms. Chris Charlton:** Fair enough, thank you.

You're not aware of other regimes that have a three-year limit.

**Mr. Joseph McHattie:** There are many different regimes in Canada, and they all have different time limits.

**Ms. Chris Charlton:** Thank you.

**The Chair:** Go ahead, Monsieur Caron.

[Translation]

**Mr. Guy Caron:** I would like to follow up on Ms. Charlton's question. I know the question should probably be put to the minister, but I'm going to ask it anyway.

There is a three-year limitation period. However, certain consequences may not become apparent until much later than that. I'm thinking, for instance, of health-related consequences. For instance, carcinogenic substances may have adverse effects on health. But certain cancers may only appear 10, 15 or 20 years later.

Are there any provisions in the bill regarding health issues that could be caused by a spill?

**Mr. Joseph McHattie:** There is nothing that addresses that aspect directly. However, if someone believed that he had been affected by a spill, he could go before ordinary courts; that recourse is always possible. It has not been eliminated.

**Mr. Guy Caron:** So, the limitation only applies to the administrative tribunal, to a complaint addressed to the tribunal created by the National Energy Board, the NEB, under the legislation; but the limit does not apply to any civil proceedings.

**Mr. Joseph McHattie:** That could be the case, but in civil law, there are several points to be considered.

[*English*]

**The Chair:** Merci.

Mr. Trost, for up to five minutes.

**Mr. Brad Trost:** In my seven-minute round I asked a two-part question, one part about bankruptcy and the pipeline being abandoned, but the second part of my question was about the competitive costs that are possible with these changes.

Has there been any competitive analysis of how much this would affect the companies? Some 1.3 billion barrels a year in Canada and a few cents on the dollar had been mentioned. Could you flesh that out a little bit more? Comparatively, what's the analysis, the business case, of what this might cost even on a per barrel basis or in total, or preferably both? Do you have any idea?

**Mr. Jeff Labonté:** I'd say we have not included the analysis at the degree of precision that would allow us to say per barrel. The reason for that is the circumstances are quite varied. Different companies today operate with different insurance provisions. Our discussion with industry has had a wide range of answers. Some companies carry already in the area of several hundred million, nearly a billion dollars' worth of insurance. Some have less insurance, but the range would be that they have different choices about how they might carry that liability. Some self-insure. Some have various insurance policies.

The market for how those policies—

**Mr. Brad Trost:** Does this really vary depending on the company? TransGas might have a different cost from Enbridge, and of course, no one gives away their competitive information all the time.

**Mr. Jeff Labonté:** That is correct, exactly. We did meet, consult, work with, and had queries with some of the different companies in the insurance industry, with some of the financial industry in the oil and gas sector, and asked them about the circumstances without explaining what we were proposing, just in the purview of—

**Mr. Brad Trost:** Would you say, though, that the cost was significant, or would it be fairly minor? As a layperson not involved in their finance and so forth, my guess is it would be fairly minor, but I honestly would just be guessing.

**Mr. Jeff Labonté:** From what we can understand, what we have here is manageable in the business costs of the pipeline industry as we see them. There will be some that have increased costs and some that have very similar costs to what they have today.

The part that we're a little more focused on right now is the smaller companies that won't fall under the billion-dollar, 250,000 barrel element. That's where the work on the regulations and the pre-publishing of the regulations will allow us to engage a little bit more fully on what the circumstances are and what the financial implications are for those companies, and the government will then be in a position to establish what the class is and what the amount is that's appropriate.

**Mr. Brad Trost:** Okay, I'll follow up on something you were referring to earlier on this. In looking at the financial requirements portion of the bill, it mentions that the NEB may consider companies' financial statements, letters of credit, bonds, insurance, etc.

Remembering back to one of the iterations when I was on committee when we did nuclear liability, they said insurance was at times difficult to get. They had a very specialized market.

Perhaps you could explain a little bit about the flexibility, the options that will be looked at, when the board will say that you have enough money and you just don't need an insurance policy, and it runs through a variety of things. Again, as someone who is not a finance specialist, what are we looking at here? Are they going to say, "Okay, if they need it, these guys can tap a billion dollars fairly quickly"?

• (1655)

**Mr. Jeff Labonté:** Thanks for the question. You've laid it out quite clearly.

When the board currently evaluates a project and a proposal for a pipeline and its operation, it will look at the financial viability of the company and its ability to construct, build, and operate the pipeline. Part of that is their asset base, their balance sheet, what kind of insurance they have, what their credit rating is, what kinds of bonds they might have, and all of the elements, and so we're providing for here that the board will have the authority and the ability to establish and understand—

**Mr. Brad Trost:** I'm sorry to interrupt again, but with our tight time, you're looking for a broad judgment that the board will make.

**Mr. Jeff Labonté:** Correct, and we're giving the board the ability to recognize different forms of financial security, because different companies will use different ways, and we don't want to prescribe that they must have insurance and it's the only thing that will be acceptable.

**Mr. Brad Trost:** I have 10 seconds, Mr. Chair. I'll leave it at that.

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

We'll start the third round with Ms. Crockatt, followed by Ms. Duncan and Ms. Freeland.

Go ahead, please, Ms. Crockatt.

**Ms. Joan Crockatt:** I want to continue on this path so that I can understand it well. I'm looking at an ERCB, Energy Resources Conservation Board, report in Alberta, which points out that every gas station, power station, sawmill, mine, or factory usually contaminates to some degree the land it sits on. You've stated that there are no regulations similar to this provincially and that we have 6.7 spms per year.

I'd like to know whether you have considered—especially in the low price environment that the industry is in now, and I realize it wasn't that way when this legislation was written—whether this legislation might go farther than it should.

**Mr. Jeff Labonté:** We're here talking to you and Parliament is debating the bill, so it's an open question. I think that irrespective of the price environment that the oil and gas industry receives for the product that they're offering to the market, there's an expectation that safety is a priority, that we have safe systems, and that companies are prepared for what costs might come from moving those goods and ensuring that we have adequate prevention, preparedness, and liability regimes to protect those.

Certainly in lower price environments it probably has a higher implication. In higher price environments it might have a lesser implication, but at the end of the day safety remains the same irrespective of the price that's being had by the producers. I'm sure they will have a different view. Some of the witnesses who are coming are from the pipeline industry. Others may have a more precise answer to your question.

Our analysis and our discussions to date with much of the industry and the financial industry, and the communities that would be implicated in this suggest that what's being proposed is in the realm of the way businesses currently operate and in the circumstances they would be expected to operate.

**Ms. Joan Crockatt:** Thank you very much. That was well said.

To follow that, you testified earlier that economic aspects will have costs associated with them, but industry should be able to cover them. I'm wondering if you can tell us how responsible industry has been in terms of embracing this kind of legislation and the high safety standards that we as the government want to hold them to.

**Mr. Jeff Labonté:** I think the statements made by different industry members about the bill when it was tabled were supportive of the direction that the bill lays out vis-à-vis safety and what's expected of companies.

The majority of the companies that we communicate with and that have communicated with us about the bill, and Canadians more generally, have felt and have expressed to us that they feel they have safe operations, run good companies, and have safe pipelines. From their perspective there's nothing here that would concern them because of the way that they operate their companies. That said, it provides a higher level of protection and a higher level of expectation than exists today in the act. The focus of the legislation I think is to strengthen and provide further clarity around what's expected in terms of liability and compensation elements, and on prevention and what's expected of companies.

I think they'll probably be in a different position than I am to speak more specifically to their interests. I imagine that they're on the list of stakeholders that you're seeing in a future meeting.

• (1700)

**Ms. Joan Crockatt:** Thank you.

What would be the goal of this legislation from your perspective? That's their perspective we've covered off. I'm asking, from our point of view, as the government, what is our goal in this legislation?

**Mr. Jeff Labonté:** In my view as a federal official, I think the goal of the government would be to ensure that we have a safe, functioning, well-designed, clear legal framework for our pipeline system that Canadians can be assured takes into account what's required and what's expected of companies, and that they operate good businesses and strive to not have incidents.

**The Chair:** Thank you, Ms. Crockatt.

I'm going to keep people on time for the last five questioners so that we have five minutes at the end to deal with the issue of the deadline for presenting amendments. For independent MPs, that deadline is 48 hours before we deal with this bill clause by clause at committee, but for committee members we can set a deadline and we will do that in the last five minutes of the meeting.

Let's go now to Ms. Duncan, for up to five minutes.

**Ms. Linda Duncan:** As a follow-up to Ms. Crockatt's question, it is my understanding that the purpose of this legislation is several-fold. One is in the mind of the government to clarify where they're imposing liability. Two, it provides clarity for the industry to know what they're going to be liable for and at what point in time and who is going to determine their liability from time to time. I would hope the third purpose would be to clarify the process for those who are damaged by spills. That is a lead-in to my question.

Before I was elected I spent 40 years in my legal career working particularly with communities around the world to make sure we have user-friendly environmental laws so that everybody who is involved in this understands it. I have to tell you that this is a complex area you're trying to cover off here, but I find it unbelievably confusing.

I tried to find the time to go back and look at the laws in Alberta, for example, that deal with pipelines, but we have a number of laws and I didn't have a chance to look at it clearly.

I'm puzzled as to why the decision was not made simply to establish a claims tribunal and have all claims simply go to the tribunal and then have regulations thereunder on the different categories of claims. Of course, you have to have the first part, imposing the liability and what the limits are, but I can't imagine that anybody who suffers the impact of a pipeline spill going to this bill is going to understand how their claim is going to be processed.

Can you explain to me how the government will deal with the two factors of the indigence of the company owning and operating the pipeline and the factor of whether the tribunal is in the public interest? Why would there be the factor of "in the public interest" when it can't be a claim about impact to the environment, and it's only a claim to your property or your person? What does "in the public interest" have to do with the consideration by the tribunal of a claim for damage from a pipeline?

**Mr. Jeff Labonté:** I think the purpose behind the notion of the tribunal is to provide for in the circumstance that a company is not accepting its responsibility or is unwilling to do so. In the case of the incidents that exist as in the record I pointed out—whatever it was, 6.7 or 7 incidents—companies have cleaned up the damage and have dealt with damages with individuals who were impacted and there is no requirement for a tribunal to exist. Should there be a difference of opinion on those things, certainly the individuals impacted have the court system to manage anything they wish to pursue.

The notion of the tribunal is in the notion of something that's out of the ordinary and something that I think is deemed to be significant, which would perhaps be the way to look at it, as opposed to creating an administrative tribunal to deal with something that is being dealt with on a civil basis, if you can put it that way.

• (1705)

**Ms. Linda Duncan:** If I understand what you're saying, presumably these companies are not voluntarily cleaning up and giving compensation. Generally speaking the NEB, or some provincial agency, or somebody is going to issue a directive and then they are going to clean up according to that directive.

What this is supposed to be about is compensation claims. One side is that the government only can seek compensation for damage to the environment. The public is out of that, so you're excluding the public from doing that.

**Mr. Jeff Labonté:** Her Majesty works in the public's interest.

**Ms. Linda Duncan:** Anyway, I find it incredibly complex.

In fact, you're not actually establishing a tribunal to make it easier for the public to seek damages.

My question connected to that is, who is actually going to decide that the company is indigent—the court, the minister, the cabinet—and based on what?

**Mr. Jeff Labonté:** There are two components.

The board has the authority in this piece of legislation to order payment for costs incurred for cleanup. That provision doesn't exist today. If you as a landowner were impacted and had costs associated with dealing with an incident or that aspect, the board would order the company to do so.

Many companies in incidents that have occurred actually act this way long before being asked to do so and pursue these activities because it's in their economic interest and because it's what's expected of them. You can be told to do something, or you can actually do the appropriate thing because you don't need to be told.

**Ms. Linda Duncan:** Right, but that's not my question.

**Mr. Jeff Labonté:** The next part of the question you had was the question around who would make the determination. The tribunal would be provided the authority to make the determination when there are damages. The regulations would spell out the damages and would provide those.

**Ms. Linda Duncan:** No, no, no, no. That's not my question.

**The Chair:** Thank you, Ms. Duncan. Your time is up.

**Ms. Linda Duncan:** My question is this. Who's deciding they're indigent so it can be referred to the tribunal?

**The Chair:** Excuse me, Ms. Duncan, your time is up.

We'll go now to Ms. Freeland, for five minutes, followed by Ms. Block, Mr. Leef, and then Ms. Charlton.

Go ahead, please, Ms. Freeland.

**Ms. Chrystia Freeland:** Mr. Labonté, in one of your answers you referred to the fact that this comes as part of a broader universe of different forms of transport and safety levels of those different forms of transport. That was especially interesting to me because in my riding of Toronto Centre there is very heightened concern about rail safety because of the rail line that passes through this very dense urban riding.

Could you give us a sense of how the safety measures set out here for pipelines compare with the level of safety and regulation for transport by rail? Have you thought about it in the context of that bigger puzzle?

**Mr. Jeff Labonté:** I could answer the question maybe at a very basic level, which is to suggest that the purpose of this piece of legislation is to focus on pipelines, but it recognizes that there are other ways of moving energy around the country, and the government is looking at those ways.

My colleagues from Transport would be able to talk to rail, but I don't actually have an expertise in that area. That doesn't say that Canadians don't have an interest in making sure that any way of moving energy is as safe as possible, but I can't really say much about rail.

**Ms. Chrystia Freeland:** I'd like to follow up on some of the questions that Monsieur Caron and Ms. Charlton were asking specifically about the three-year time limit.

Let's imagine a situation in which the billion-dollar limit has been reached and then, after the three years, new claims arise. How would those claimants be covered?

**Mr. Jeff Labonté:** I guess it's always good to have questions, and the hypothetical ones are always, for officials, very challenging because they're speaking to something that may or may not occur.

**Ms. Chrystia Freeland:** If I may say, in defence of that line of questioning, surely part of the job of legislation is to imagine various hypothetical situations and to cover them.

**Mr. Jeff Labonté:** Indeed. The billion-dollar threshold is for major oil pipelines. In the scenario you've laid out, you've suggested that it was a major oil pipeline that would have had an incident, and you've suggested that there's a three-year limitation as to the kind of activity that would take place. If that incident was one in which there was fault and negligence proven, there is an unlimited requirement and liability that exists for the company that operates that major oil pipeline, and that is essentially the legal case.

In the world in which there is some dispute about that liability, there would be the legal system to pursue the dispute between the different parties that would be involved, beyond the absolute liability amount, which would be limited to the billion dollars.

• (1710)

**Ms. Chrystia Freeland:** So the three-year limit would make no difference.

**Mr. Jeff Labonté:** The three-year limit—if I'm correct, Joseph; thankfully the Justice folks are here on the more broad scale—really deals with the claims that are made in the context.

I'd have to kind of leave it at that for now and perhaps lean on my colleague to speak to the question.

**Mr. Joseph McHattie:** All right.

Thank you for the question. The three-year limit establishes the time limits in the civil courts as well, so there's the three-year and then there's the six-year full stop limit, and those would apply.

**Ms. Chrystia Freeland:** But I thought I just understood from the first part of the answer that, if I made a claim after the three years, I would be okay because negligence had already been established, and now I'm understanding that's not the case.

**Mr. Joseph McHattie:** They're all the same, so the time limit, the prescription that is set out by this act in proposed section 48.12, I think. That's right.

**Ms. Chrystia Freeland:** Do I have another minute?

**The Chair:** A very short question and short answer, yes.

**Ms. Chrystia Freeland:** I'll go back to Ms. Charlton's point about volumetrics versus type of goods.

Again, in my riding, on rail safety, my constituents are extremely concerned about certain types of oil being transported by rail, especially in their case the Bakken. Are there any particular types of oil transported in pipelines that you are particularly concerned about? I heard your arguments about volumetrics being the best metric, but is there something which there should be a special level of scrutiny around?

**Mr. Jeff Labonté:** It all should be transported safely. All crude oil and oil-related products have elements about them that make them, what in the rail world is termed, “dangerous goods”, but from the perspective of this thing versus that thing, it's all to be concerned with equally.

**The Chair:** We go now to Ms. Block, followed by Mr. Leef and Ms. Charlton, and if any of you want to be more brief than five minutes, I wouldn't be offended by that.

Ms. Block.

**Mrs. Kelly Block:** Before I start my questions, I do want to thank you for being here. It's been good to have you here providing this testimony to us.

Canada has enormous natural wealth, and whether we're talking about the huge reserves of energy resources, or the massive tracts of forest, or the minerals and metals, we know that they contribute to the economy of our country.

I note in the deck that you prepared for us to talk about the pipeline safety act, you have a slide toward the very end that's entitled “Economic and Safety Context”. I want to give you an opportunity to speak to that, if you wouldn't mind.

**Mr. Jeff Labonté:** It's in slide 10 of the information that we provided, just recognizing that in 2013 there was some \$133 billion of hydrocarbons moved over Canada's federally regulated pipeline networks. Some 6,000 jobs and \$7 billion in revenues were

generated by the pipeline industry. In terms of importance to the economy, these are very substantial amounts of money.

They reach across the entire country. Certainly, pipelines exist in every part of the country. They employ thousands of Canadians. Every economic activity carries associated benefits and they also carry implications for safety that have to be managed. That is the reason we have the legislation. That's why we're proposing amendments to make pipelines as safe as they can possibly be, to hold industry as accountable as we can hold them, and to establish liability.

• (1715)

**Mrs. Kelly Block:** That's making them safer than the 99.999% that they already are.

**Mr. Jeff Labonté:** We hope so. That 99.999% is great. It ought to be as good as it can be.

**The Chair:** Mr. Leef, for five minutes.

**Mr. Ryan Leef:** I think you've effectively covered some of what we saw as either outstanding concerns, or questions which on the face were a bit ambiguous, so thank you for providing a lot of clarity around some of those pieces.

I did ask about the complexity around the provincial regulatory regimes and merging with the federal bit. Maybe that would invite whatever comments you're able to make in terms of the relationship around not just provincial governments but municipal and first nation relationships. What steps have been taken to engage aboriginal communities on pipeline safety and this act in particular?

**Mr. Terence Hubbard:** Pipeline safety is an objective shared by all levels of government in Canada. We've heard very clearly from our colleagues in provincial governments, as well as from municipal governments, about the importance of pipeline safety. Over the last number of years there's been a significant level of public focus, and several major pipeline applications are currently being considered. As part of the consideration of those projects by various jurisdictions, there is significant interest in ensuring that those pipelines can be developed as safely as possible.

Over the last number of years we have used a number of mechanisms to engage provincial governments, municipal governments, and aboriginal communities. The Energy and Mines Ministers' Conference provides a mechanism whereby federal and provincial ministers gather to discuss areas of priority focus. Safety of energy transportation systems has been identified as one of those areas. We've used that mechanism to share information on the objectives around pipeline safety.

We've had a number of conversations with aboriginal communities over the last number of years within the context of individual pipeline applications, but also as part of the follow-up work the government is undertaking, following the efforts of Douglas Eyford to engage first nations communities in the development of new energy infrastructure. As part of those discussions, we heard very loudly and clearly that there's a strong expectation by aboriginal communities that governments will focus on pipeline safety. Going forward, first nations communities want to participate in ensuring safe operations of pipelines.

At the same time the pipeline safety act changes were announced, the government also made a separate commitment to work with industry and first nations communities to increase aboriginal participation in all aspects of pipeline safety going forward. We're working in parallel with industry and first nations communities in that regard.

**Mr. Ryan Leef:** Thank you.

I think the intention of this kind of bill is, obviously, to help lead us to preventing pipeline spills in the first instance as well as to mitigate rather quickly any accidents that do occur. Really it's to reduce the overall expenses to Canadian taxpayers for both cleanup and mechanisms that need to be put in place to ensure safety.

Just as a final word, are you confident that this piece of legislation is leading us in that direction with those three priorities in mind? Do you share those three as the key priorities of this legislation?

**Mr. Jeff Labonté:** Based on the framework we have with specific elements around prevention, preparedness, response, liability, and compensation, we feel that adding further strength to try to prevent incidents is the first and most important step to preventing damage and the area on which we are focused. We think that requiring companies to be financially ready, and enabling the regulator to ensure that Canadians are protected if something does occur, and ordering companies to deal with incidents and carry out the financial aspects without need for proof of fault or negligence is a pretty sizeable burden and ensures that industry is doing everything it can and is working really hard to ensure that incidents don't happen. If they happen, and sometimes they do, companies will be held accountable and Canadians will be protected.

• (1720)

**Mr. Ryan Leef:** Thank you very much.

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

Finally, we go to Ms. Charlton, for up to five minutes, please.

**Ms. Chris Charlton:** Part of me feels a little sheepish here. We do think this bill is a step in the right direction; we're just trying to get to the heart of whether the bill actually achieves what we all hope it will achieve. If you feel as though we've tried to put you on the hot spot or we were too aggressive, our intent was good, I think, even if the questioning was a bit tough at times.

I want to ask you one specific question. Under proposed section 48.46 of the NEB Act, you would know that the Minister of Natural Resources would recommend to the Minister of Finance the amount of public funds that would be made available to pay for response measures, a tribunal, and costs related to cleanups. I wonder how the Minister of Natural Resources is expected to determine what amount to pay and what the criteria are.

I will also have a follow-up question to that.

**Mr. Jeff Labonté:** Thank you for the question.

We envisage that the first step actually involves the National Energy Board, who are the experts, and the regulators establishing an understanding and providing a recommendation to the minister that a company is either not able to deal with the incident or is not dealing with it in the way that it is legally expected to.

**Ms. Chris Charlton:** You may not be able to answer this question because I suspect you might suggest it's a political one, but I'd like you to try.

**Mr. Jeff Labonté:** I'll do my best.

**Ms. Chris Charlton:** If the NEB makes a recommendation to the Minister of Natural Resources—and I may ask the NEB what those criteria might be—the Minister of Natural Resources has a conversation with the Minister of Finance, and at that point you have two competing priorities. One priority may well be that you want to balance the budget, and the other may be that you want to do right by the communities affected. At that point the decision about what would be an appropriate amount to pay becomes entirely political. You're talking about that money coming out of the consolidated revenue fund, so obviously the lens through which you would view priorities at that point becomes entire political.

If we really believe in the polluter pay principle, why is that section in the bill in this way as opposed to making it possible for us to be assured that the polluter indeed does pay?

**Mr. Jeff Labonté:** Let's start at the beginning.

Companies are absolutely liable for \$1 billion. We have all of the measures in place to ensure in the regulatory frame that the companies have the \$1 billion, that they have the adequate financial circumstances. We've—

**Ms. Chris Charlton:** Unless they don't, which is what a large part of this bill contemplates.

**Mr. Jeff Labonté:** In the world of incidents that have occurred, and incidents that we've seen and behaviour that we've seen, there's nothing to suggest that companies will not behave in the way that we expect them to or that they financially can't.

I think it's reasonable to say that it's unlikely, but in the event that it does occur—and it's in the minds of Canadians for sure, and we've heard it in discussions that we've had with different players—what will happen?

The bill provides a statute-based frame that allows the National Energy Board, an independent body that regulates the oil and gas pipeline industry in Canada federally, to make a determination that they don't believe a company is able to deal with the consequences because they may go bankrupt, or they're not behaving as rapidly or quickly as appropriate, and they make a recommendation to the Minister of Natural Resources.

The Minister of Natural Resources then seeks a cabinet decision, which is the democratic decision-making process around how the government operates, as to whether the company would then be designated as unresponsive or unreliable or unreasonable, however it might be, based on the circumstances that the board presents—the independent regulatory body. That then provides the Minister of Natural Resources with the ability to instruct the board to act.

Then the Minister of Natural Resources makes a recommendation, again based on information on the circumstances presented by the board, which is independent and has the expertise, that they believe it is going to be  $x$  dollars. It makes a recommendation to the Minister of Finance that says they believe it's going to be  $x$  dollars to clean this up, recognizing that the further authority in the act provides for the government to recover all of those costs.

Although there is a decision to be made by ministers who are accountable to Canadians about what the circumstances are and how they are present, I think we're talking about an event that's probably going to be very out of the ordinary, at best. That decision-making frame will provide the appropriate guidance to make that decision, and in doing so, it still protects Canadians and will ensure that polluters pay. The individual polluter in this circumstance, the company that isn't behaving properly, may not be the only party that pays. The industry more broadly might pay, but that would then be actually recovered by the government.

• (1725)

**The Chair:** Thank you.

**Ms. Chris Charlton:** May I ask one quick follow-up on public reporting? Do I have 10 seconds?

**The Chair:** Okay, very quickly.

Go ahead.

**Ms. Chris Charlton:** We're talking about public accountability, right?

It's the cabinet, on the one hand, but on the other hand, can I ask whether there would be any kind of public reporting of the liability coverage that companies actually have in place so we don't get down this road? I don't see a requirement for that kind of public reporting, but maybe I missed it.

**Mr. Jeff Labonté:** It is part of the hearing record of the National Energy Board certificate conditions today. In establishing the conditions that will be required on a go-forward basis, it will be part of the certificate conditions. Those are public.

**Ms. Chris Charlton:** That's at the front end.

Where would I find it for existing pipelines?

**Mr. Jeff Labonté:** For existing pipelines, you would see them in the record of those existing pipelines that might be—

**Ms. Chris Charlton:** It wasn't a criterion necessarily at the time.

**Mr. Jeff Labonté:** It is actually a criterion of the board.

The board reviews today, and has for 50 years, the economic circumstances of the company making the application. They have not necessarily in all cases provided for "You must have \$100 million in insurance", but they have reviewed the economic circumstances of pipelines.

To finish the comment, because I think you've asked an important question, in representing what's in the bill, the board will have to have proof provided by the company, and that will be part of the certificate condition for the pipelines that exist today, including ones that were certificated 20 years ago. They will be—

**The Chair:** Thank you very much, Ms. Charlton.

Thank you to the officials for being here today. We'll see you back at clause-by-clause study, I assume.

Let's go directly to the issue of committee members and independents. Apparently committee can decide that independents have to present any amendments that they may be proposing at the same time as the committee agreed time.

Ms. Block.

**Mrs. Kelly Block:** Mr. Chair, given that our final day of witnesses is March 31, and that we had already planned to go through clause-by-clause study on April 21, which is the day after we come back, I would like to propose that we set a deadline for amendments of Friday, April 10.

That's about a week and a half after the final day of witnesses and about a week and a half before we go through clause-by-clause study. I think that would give time for the amendments to be put together and give us an opportunity to see them before we're actually going to be looking at them and contemplating them during clause-by-clause study.

**The Chair:** Our date set for starting clause-by-clause study is April 21.

Monsieur Caron.

[Translation]

**Mr. Guy Caron:** I would like to have a little more time before the deadline to table amendments, because we still have many questions. Of course, we no longer have time to put our questions orally.

We could submit a list of questions to the clerk so as to obtain an answer from the department representatives. It may take them some time to reply. We should be able to give them a timeframe, such as the first week of April when we will be in our ridings. These replies will allow us to develop the amendments we could present subsequently. We need a little more time to submit those amendments. I suggest Wednesday or Thursday. Is April 15 a Wednesday?

[English]

**The Chair:** April 10 is the end of the first riding week, I think, yes.

[Translation]

**Mr. Guy Caron:** We could suggest that April 15 be the deadline to table amendments, so as to allow them to answer the questions we would like to send to them before the previous Friday.

[English]

**The Chair:** You've heard an alternate proposal of April 15.

Ms. Block.

**Mrs. Kelly Block:** I have concerns with that, given that we will then only see the amendments a couple of days before, if not just the day before, clause-by-clause study. While I recognize that the opposition would like this time, we're still a week away from March 31.

Perhaps some of the questions that you already have and that you would like to see put to the officials could be done this week and all of next week.

I would suggest that we push it to Monday, April 13. That would give the clerk time to collate the amendments, and then we'd have an opportunity to see them a day or two before we're going to be discussing them at clause-by-clause study.

• (1730)

**The Chair:** You've heard an alternate proposal.

Monsieur Caron.

[*Translation*]

**Mr. Guy Caron:** Mr. Chair, I would like to put a question to the clerk.

When the amendments are tabled, how much time does it usually take before we have them in our hands?

**The Clerk of the Committee (Mr. Rémi Bourgault):** It can take about 24 hours, depending on their complexity. They all have to be put in order and we may receive them all at the last minute on April 13.

What time did you have in mind, Ms. Block?

[*English*]

I don't know what time you have in mind for April 13.

**Mrs. Kelly Block:** Well, end of day.

**The Clerk:** Okay, end of day.

[*Translation*]

If it is around 4 o'clock, you would probably not receive them on April 13 because they all have to be collated.

**Mr. Guy Caron:** Ms. Block, you suggested Monday, April 13. We suggested Wednesday, April 15. Could we compromise and choose Tuesday, April 14?

I think that should give us enough time. We should be able to provide the questions after having dealt with the...

[*English*]

**Mrs. Kelly Block:** I had actually suggested April 10.

I just think we want to have an opportunity to do due diligence in looking at the amendments, understanding the implications that an amendment might have on the legislation.

You want to submit them by the end of the day on April 14. Does that give them to us potentially at the end of the day on April 15?

[*Translation*]

**The Clerk:** I don't want to get involved in the discussions or the negotiation, but if you choose April 14, around noon,

[*English*]

we may have a chance to get them delivered to everybody earlier than at the end of the day on April 15.

**Mrs. Kelly Block:** Sure, okay.

**The Chair:** Noon on April 14. Is there agreement?

**Mrs. Kelly Block:** Sure.

**The Chair:** Could we have the clerk draft the appropriate motion? That motion will also apply to independents. They have until that same time and then proceed in that fashion.

Is it agreed?

(Motion agreed to [See *Minutes of Proceedings*])

**The Chair:** Thank you, all.

Yes, Monsieur Caron.

[*Translation*]

**Mr. Guy Caron:** Mr. Chair, I would like to ask a few brief questions about the witnesses.

We had asked to hear Ian Miron, from the Ecojustice organization. He has already been accepted as a witness and he will appear. However, according to what I understood, his hotel stay in Ottawa has not been authorized. Am I mistaken?

**The Clerk:** Yes.

**Mr. Guy Caron:** So his accommodation costs would be covered?

**The Clerk:** Yes, I answered him about that.

**Mr. Guy Caron:** Perfect.

[*English*]

**The Chair:** Okay.

[*Translation*]

**Mr. Guy Caron:** I have a second question about the witness list.

We were told that our list was closed, but we would have liked to hear representatives from the Union des producteurs agricoles because certain provisions greatly affect farmers. We would like to give them the opportunity of testifying about their concerns. Would it be possible to add the UPA to the list of witnesses?

[*English*]

**The Chair:** You know, I think we're into an area that... If we're going to have a meeting to discuss this, we'll have to have an in camera meeting. We're out of time. I was counting on just dealing with the issue of the amendment deadline, very quickly.

[*Translation*]

**Mr. Guy Caron:** You understand what I mean, Mr. Chair?

[*English*]

**The Chair:** We could do that.

I'll have to have a look at it, but we can....

[*Translation*]

**The Clerk:** It is late to do that on Thursday because it is for the following Tuesday.

**Mr. Guy Caron:** Could we discuss this informally at the end of the committee meeting?

[*English*]

**The Chair:** Okay, we'll have a look at that and make sure we do something with that.

Thank you all very much for your good questions and cooperation. The meeting is adjourned.

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