HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 011 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, February 11, 2014

Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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● (0845)

[*English*]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I'm going to call the meeting to order. We still have a few members to come, but we are on a time restriction.

We'll start our study on Bill C-3.

I'd like to thank and welcome Mr. Dawson, Ms. Nakatsu, Mr. Meisner, and Mr. Lachance. With no further ado, I'll turn it over to you. I presume one of you has some opening remarks.

Mr. Meisner, who wants to start?

Mr. Tim Meisner (Director General, Marine Policy, Department of Transport): We'll start with Mr. Dawson.

Mr. Dave Dawson (Director, Airports and Air Navigation Services Policy, Department of Transport): Good morning. I'm here to talk about the aviation industry indemnity act. I'm going to read the presentation to you, and if you have any questions after the fact, we'll deal with them.

Air industry participants, including carriers, airports, and air navigation service providers, as well as other suppliers to the air industry, require sufficient insurance coverage to operate. Insurance is required by regulation, commercial contracts, and for fiduciary reasons. Air industry participants need two types of insurance coverage: general and war risk. General insurance coverage is required in case of accidents, the same as for anyone else, but war risk insurance is different.

War risks is the term the insurance industry uses to describe potential damages caused by acts of violence. These include acts of war, but also other actions, like civil unrest, and of particular concern in recent times, acts of terrorism.

War risk insurance covers a range of categories of losses, liabilities, or damages. For example, an airline purchases insurance to cover the plane and the equipment, otherwise known as first party insurance, and the plane's contents, including the passengers and cargo, otherwise known as second party insurance. Finally, it must also account for the people and the property on the ground who have no particular relationship to the flight. These people are called third parties. The same broad categories exist for other parts of the air industry, other than just the airlines.

Before the attacks of September 11, 2001, the insurance industry offered war risk insurance at low rates. Following the attacks, insurance providers invoked short-term cancellation clauses for war risk coverage, leaving the air industry in a predicament, as this insurance is necessary for them to operate. The absence of a workable legislative framework necessitated the government's use of the royal prerogative to provide the coverage the aviation industry required. Since that time, the government has continued to use the interim authorities to provide an aviation war risk liability program, as the commercial markets for war risk insurance have been unstable and third party coverage has been most affected.

This situation was compounded by the recent global financial and economic crisis. In the Canadian context, the broader instability was particularly exacerbated by the approach of our closest competitors in the United States, which implemented a government based and supported approach to aviation war risk insurance that created a competitive advantage for their air industry participants.

This bill, the aviation industry indemnity act, would allow the government to provide aviation war risk liability coverage in a dependable and transparent manner when it's necessary to do so. It would also allow the tailoring of such assistance, if circumstances warrant, to the specific needs of individual industry participants and to rapidly adjust to changes in circumstances.

The markets for general insurance have not been affected in the same way. For that reason, general insurance risks are not addressed in this bill.

The events of 2001 illustrate the importance of providing the Minister of Transport with the ability to issue an indemnity if and when needed. The aviation industry indemnity act would provide the minister with the ability to offer an indemnity. It would not guarantee one. The Minister of Transport would undertake regular assessment of the state of the aviation war risk insurance markets and decide whether to offer an indemnity in light of the findings. This also would give the minister the ability to act or respond on very short notice, especially in that kind of emergency situation when rapid action is most necessary.

For example, at times it's necessary for the government to contract with an aircraft operator to send an aircraft into dangerous situations to evacuate Canadian citizens or undertake other humanitarian activities. In cases where the necessary flights would be impossible because insurance was not available, this bill would ensure that the Minister of Transport had the flexibility to issue an undertaking on short notice that would give the aircraft operator the coverage necessary to complete such urgent missions on Canada's behalf in a timely manner.

Although third party coverage for people and property with no connection to the aviation industry participant has been the primary concern to date, the bill would also give the minister the ability to provide an indemnity to address coverage for first and second parties if needed. Such coverage might be necessary in the earlier example of chartering an aircraft for emergency evacuations.

● (0850)

It could also be necessary, more generally, in a worst case scenario that included a broad-based withdrawal of private insurers for the aviation war risks.

If considered necessary, an indemnity could be provided to any member or group of members in the Canadian aviation industry. Because these entities might have differing insurance needs, the bill provides for tailoring an indemnity to meet the needs of the various players most effectively. It is even possible to indemnify an individual participant in case of special need. This flexibility ensures that coverage remains available to Canada’s aviation industry when and if it is necessary.

The bill includes provisions that allow the Minister of Transport to attach appropriate terms and conditions to an undertaking. These include the amount of indemnity to be provided and whether the aviation industry will have to purchase some insurance on its own. This is particularly important when there is instability but not outright failure in the markets.

This approach provides the additional benefit of encouraging commercial insurance markets to optimize coverage, and divides the risk between the government and the air and insurance industries in a way that is most appropriate to the circumstances prevailing at the time.

In addition, the terms and conditions attached to an indemnity can reference standard insurance industry practices or documents to ensure that not only is coverage provided, but it's provided in such a way as to ensure compatibility with practices familiar to Canadian aviation industry participants, and in a way that foreign regulators and business partners understand.

Although the proposed aviation industry indemnity act specifically identifies who may receive an indemnity, the types of risks covered, and some procedural matters, it does not include many other prescriptive elements. This is done because such things are impossible to anticipate and the government may have to react very rapidly. Rigid requirements would remove much of the usefulness of this bill.

This bill is designed to ensure clarity and transparency to Parliament and the Canadian public. It includes provisions for the regular assessment of the state of the aviation industry as well as regular reports to Parliament on activities undertaken under the authority of the bill.

A report must be made within 90 days after a new or amended indemnity is provided, or if there have been no changes, at least every two years. In addition, all new or amended indemnities will be published in the *Canada Gazette*. This approach ensures that all who need or want to know what is happening with regard to the bill can do so.

In conclusion, this bill will allow the government to provide aviation war risk insurance coverage in a dependable and transparent manner, as and when needed due to limitations in the commercial insurance markets.

Thank you.

● (0855)

The Chair: Thank you.

We'll now go to Ms. Nakatsu.

Ms. April Nakatsu (Director General, Crown Corporation Governance, Department of Transport): Good morning.

In recognition of the significance of marine transportation to Canada and its contribution to the Canadian economy, the Canada Marine Act was enacted in 1998.

One of the outcomes of this legislation was the establishment of Canada port authorities. There are currently 18 port authorities across Canada, and each is incorporated under their own letters patent. They are autonomous entities operating independent from the federal government. Their mandates are to manage their marine infrastructure and services in a commercial manner that encourages and takes into account input from users and the community in which the port is located.

They have boards of directors composed of between seven and eleven directors. The majority of the appointments to the boards are made by the Governor in Council. The individuals are nominated by the minister, and in some cases are in consultation with port authority users. Additionally, municipalities and provinces also appoint directors to the port authority boards.

Most appointments in the Transport portfolio become effective at a date set by the Governor in Council. However, effective dates of appointments to port authorities are not determined by the Governor in Council. Under subsection 14(2.2) of the Canada Marine Act, these appointments come into effect when port authorities are notified. This appears to be a unique constraint to the Governor in Council's power to appoint.

In addition, a distinct mechanism is required to track and monitor effective dates for appointments to port authorities. This results in additional administrative processes. A total of 95 Governor in Council appointments are affected, which represents one-third of all appointments in the Transport portfolio.

To assist in standardizing effective dates throughout the Transport portfolio, the government is proposing to amend the Canada Marine Act. As a result, the Governor in Council would set the effective date of appointments to port authorities. This change would also improve efficiency in administrative processes.

The amendment does not change any of the qualifications or other requirements for appointments to port authorities. It is a change to the effective date of the appointment only.

Thank you.

The Chair: Go ahead, Mr. Meisner.

Mr. Tim Meisner: Good morning.

This morning I'm pleased to have the opportunity to speak about the amendments to the Marine Liability Act as contained in Bill C-3, the safeguarding Canada's seas and skies act.

The purpose of the Marine Liability Act amendments is to fill a gap in the current liability regime for ships and to ensure that Canadians and the environment are well protected from the risks of marine transport. This bill protects Canadians against the financial consequences of hazardous and noxious substance spills from ships by: one, ensuring that shipowners carry the appropriate amount of compulsory insurance for the risks associated with the cargoes they carry; and two, providing Canadians access to an international fund to provide compensation beyond the shipowner's limit.

These amendments are important and necessary, because while Canada has an excellent marine safety record, it is important to have in place a robust liability and compensation regime to ensure that polluters pay for incidents and that Canadian interests are protected by modern legislation that includes proper compensation.

These amendments will facilitate the implementation of the 2010 hazardous and noxious substance, HNS, convention, an international liability and compensation convention adopted by the International Maritime Organization. Spills of dangerous substances can be costly to clean up, and these amendments will ensure that those affected by these spills are adequately compensated.

Shipping is truly and inherently a global industry. The international shipping industry is responsible for carrying about 90% of world trade, and is critical to the functioning of global commerce. Unlike other modes of transportation, which are more or less confined to our roads, railways, and airports, international ships have vast amounts of waterways to operate in and are constantly on the move from state to state to connect global supply chains and deliver goods and people to their markets and destinations.

Given this, it is important that Canada continue to contribute to the uniformity of international maritime law and continue its long-standing tradition of multilateralism with regard to international shipping. As I said, this is a global industry requiring global rules. Canada's intimate involvement in the advancement of the HNS convention is indicative of that long-standing tradition.

The 2010 hazardous and noxious substance convention establishes strict liability for the shipowner and also introduces compulsory insurance for their liability for the pollution damage caused by a spill of hazardous and noxious substances from a ship. This is a major improvement over the current regime when it comes to dangerous goods such as chemicals. The convention also includes membership to an international fund that will pay compensation for pollution damage caused by such spills.

Contributions to the international fund will be paid by cargo owners. By splitting the financial responsibility between the two principal parties involved, the shipowner and the cargo owner, this convention supports the very important polluter pays principle and will ensure that both the shipowner and cargo owner pay for pollution damage caused by their ship or goods.

This international convention is modelled on an existing regime for oil pollution from ships, which has served Canada well. The regime ensures that the risks associated with international shipping are shared globally. By ratifying this convention, Canada will gain access to approximately $400 million in compensation for a single spill of hazardous and noxious substances.

The hazardous and noxious substances convention covers a wide variety of substances, some 6,500 substances that are carried in bulk and in packages and containers along our coast and through Canadian waters. These substances include liquefied natural gas, propane, refined fuels, and other dangerous cargoes. The broad scope of coverage of these hazardous and noxious substances under this convention will go a long way in ensuring that Canadians are well compensated should an incident occur.

In the case of ship-sourced spills of refined fuel, compensation available from the ship-source oil pollution fund will continue to apply. This is a unique Canadian feature of our regime that will continue to benefit Canadians by ensuring that another tier of compensation is available to victims of oil pollution damage and by providing one of the highest amounts available globally for a spill of oil.

Transport Canada has consulted with Canadians and stakeholders who widely support the passage of the proposed amendments to the Marine Liability Act. The shipping industry had recently written to the chair of this committee to express their strong support for the proposed amendments to the Marine Liability Act. The cargo owners who would pay into this HNS fund have also voiced their support for this bill.

In summary, these amendments will ensure that shipowners carry adequate insurance and are held strictly liable for the damage caused by hazardous and noxious substances from their ship, and set out the legal framework for an international compensation fund to provide compensation to victims. It's a significant step forward in advancing the ship-sourced liability and compensation regime and in ensuring that victims of spills of hazardous and noxious substances are adequately compensated.

Thank you.

● (0900)

The Chair: Thank you, Mr. Meisner.

Mr. Lachance.

Mr. Sylvain Lachance (Acting Director General, Marine Safety and Security, Department of Transport): I would like to thank the committee for the opportunity to speak of the important amendments to the Canada Shipping Act, 2001, as part of Bill C-3.

The amendments focus on three key areas, the first of which is the removal of obstacles to respond to an oil spill by addressing gaps in the civil and criminal immunity protection provided to response organizations, oil spill responders, and responders coming from outside of Canada at the request of a Canadian response organization.

Currently, the responder immunity provisions apply to certified Canadian response organizations and persons designated by the minister as an approved responder. Over the course of the past several years, industry stakeholders, specifically Canadian response organizations and certain U.S. oil spill response organizations, have raised two primary concerns with responder immunity and its application.

One concern brought forward by stakeholders was whether agents of Canadian response organizations were provided immunity when responding to a spill in Canadian waters. The second concern was whether Canadian response organizations were covered by responder immunity when responding to a spill at an oil handling facility.

The responder immunity amendments were designed to address these two concerns by providing civil and criminal immunity protection to agents of certified response organizations, including those coming from outside of Canada at the request of a response organization. The responder immunity amendments also provide the inclusion of "oil handling facility" within the definition of a response operation. This in turn clearly provides response organizations with immunity when responding to a spill at an oil handling facility during the loading or unloading of oil to or from a vessel.

The second series of proposed amendments will enhance the current requirements for oil handling facilities to reduce the likelihood of a spill from occurring and improve upon the response to a spill in the unlikely event that one should occur.

Currently, the Canada Shipping Act, 2001 does not include an authority to set requirements for persons who propose to operate an oil handling facility. For example, Transport Canada cannot compel such persons to formally notify the minister of the proposed operations or compel them to submit plans to the minister to verify compliance. The current legislative framework only provides Transport Canada with the authority to verify compliance once the facility becomes operational. Under such an approach, there is a risk that regulatory compliance issues could go undetected, resulting in an increased risk of a pollution incident.

To address this gap, amendments targeting new oil handling facilities would require persons who propose to operate a facility to provide notifications to the minister and to submit an oil pollution prevention plan, as well as an emergency plan, at least 90 days before operations begin. In addition, the minister will have the authority to compel persons who propose to operate a facility to submit any information or documents required to assess compliance. Finally, oil handling facilities would be prohibited from beginning operations unless the plans meet the requirements set out in the regulations.

Other sets of amendments target oil handling facilities that are or have been operational. Currently, there is no legal requirement for an operator of a facility to notify the minister, which means that Transport Canada may not be aware of all of the facilities that are currently in operation. Similar to the requirements for persons who propose to operate a facility, the minister will have the authority to require oil handling facilities to submit information or documents. The act presently requires oil handling facilities to have plans on site, but it does not specify that the plans have to be up to date, which is currently implicit but will now be clearly stated in the act. This requirement also has been included.

Also introduced is a requirement that operators of oil handling facilities who wish to make significant changes to the nature of their operation, for example, transfer rate, product, etc., will be required to notify the minister of the proposed change at least 180 days prior to the day on which the change is made. This includes the obligation to revise and submit the plans to the minister 90 days before making the changes.

Last, provisions have been included that would prohibit the facility from making a change to operations unless the plans meet the requirements set out in the regulations.

● (0905)

These requirements will strengthen the ability of oil handling facilities to prevent, prepare for, and respond to a potential oil spill. They will also provide Transport Canada with the necessary information to inform oversight activities.

The third series of proposed amendments looks at creating a fair and effective alternative to prosecution when dealing with minor to moderate contraventions of the pollution prevention and response requirements contained in the Canada Shipping Act, 2001, and pursuant regulations.

Currently, the administrative monetary penalties regime that is set out in part 11 of the act does not apply to part 8. Therefore, there are only two options for dealing with non-compliance with part 8 and its regulations: either to prosecute regulatory infractions through the court, or to take administrative actions, for example, by suspending the certification of a non-compliant response organization.

Both options are drastic and potentially expensive. Creating effective deterrents to contraventions of legal requirements is key to maintaining the integrity and effectiveness of any regulatory program. Administrative monetary penalties are a flexible enforcement tool that provides a quick yet effective means, consistent with administrative fairness, for addressing non-compliance with legislative and regulatory requirements. Administrative monetary penalties have long been considered a more cost-effective method of enforcement than prosecution.

Amendments to the Canada Shipping Act, 2001 will allow the making of regulations that could result in fines ranging from $250 to $25,000 for violations of relevant provisions pertaining to pollution prevention. Administrative monetary penalties will apply to both response organizations and oil handling facilities, thus providing another enforcement tool for marine safety inspectors.

In addition to the amendments already discussed, Bill C-3 provides the minister with several new powers targeting oil handling facilities. The minister will now be able to direct the operator of an oil handling facility to update or revise a plan and submit that plan. The minister will be able to take measures if it is believed that an oil handling facility has discharged, is discharging, or is likely to discharge oil. The minister can now also monitor measures taken to repair, remedy, minimize, or prevent pollution damage, as well as direct operators to take necessary measures to repair, minimize, or prevent pollution damage. Finally, the minister will have the power to designate an oil handling facility to be part of a class regardless of its prescribed class as set out in the regulations.

New offences have also been established for non-compliance in areas such as a failure to submit updated plans, failure to notify the minister of a change of operation, or failure to update plans following a change of operation.

These infractions could result in a fine of not more than $1 million, up to 18 months in prison, or both. Failure to notify the minister of proposed operations or beginning operations without first notifying the minister could result in a fine of not more than $100,000, up to 12 months in prison, or both.

In conclusion, these amendments are an important first step towards achieving our goal of establishing a world-class tanker safety system in Canada.

I would like to thank the committee once again for the opportunity to present this overview of proposed amendments to the Canada Shipping Act, 2001. I look forward to answering your questions.

● (0910)

The Chair: Thank you very much.

We will now turn it over for questions.

Mr. Mai, you have seven minutes.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

I want to thank the witnesses for joining us today. I also want to thank them for their work on this issue.

This is a large bill that enacts the Aviation Industry Indemnity Act and amends, among others, the Aeronautic Act, the Canada Marine Act, the Marine Liability Act and the Canada Shipping Act, 2001. So its scope is fairly broad.

Many of this bill's provisions have been approved at the industry's request to establish safer rules. We also support the polluter pays principle. These measures are steps in the right direction, especially given the situation with the Marine Liability Act. I have a few more questions about that.

Generally speaking, given the large number of budget cuts and station closures, the NDP asked that the bill's scope be broadened in order to protect the coasts. Like Canadians, we are very concerned about environmental protection.

I would now like to go back to part 4 of the bill, which amends the Marine Liability Act.

Mr. Meisner, is a ship owner's liability limited in the case of hazardous and noxious substance spills?

[*English*]

Mr. Tim Meisner: Yes, there is a limit of liability in a shipowner. It is established based on two factors. One is the size of the ship, and to a certain degree, it's the product they're carrying. The maximum amount of liability is about $185 million Canadian. I should mention that the limits in the convention are set by what they call special drawing rights, SDRs. The fluctuation in the Canadian dollar establishes the limit to a point, but based on today's standards, the maximum limit of liability for a ship would be $185 million.

Just to explain, when I was talking about the total compensation being $400 million, the fund would make up the difference between the $185 million and the $400 million. If the shipowner's liability happened to be less, let's say $150 million, the fund would still make up the difference. They move in tandem to make a maximum liability compensation of $400 million.

● (0915)

Mr. Hoang Mai: The fund is basically a fund that shipowners have put in amounts.... Is it an international fund?

Mr. Tim Meisner: It's an international fund set up by the IMO, but the way it's going to be structured is that shipowners will pay for it only post-incident.

[*Translation*]

Mr. Hoang Mai: Why is the liability limited to a total of $400 million? We have seen in cases such as Exxon Valdez that the costs involved could be huge. Can you explain to us why that limit was set at $400 million? That seems to be very low, considering the extent of economic repercussions and the pollution caused.

[*English*]

Mr. Tim Meisner: The $400 million was set by international convention, which involved a lot of discussion, debate, and dialogue among the several countries that sit there. Through consensus, they came up with the $400-million limit.

Just to clarify, for hazardous and noxious substances, there has never been a chemical spill that came anywhere near that amount. You mentioned the *Exxon Valdez*. That would be covered under a separate regime. There is a separate oil spill regime. That particular regime currently has upwards of $1.4 billion available. There are two different regimes: one for chemicals and another one for oil.

[*Translation*]

Mr. Hoang Mai: That is another point I would like to clarify. The limit does not apply to oil spills in this case, but only to noxious and hazardous products.

Correct me if I am wrong, but other countries, such as Norway, have no limit. Are there any other countries where the domestic legislation does not set a limit such as the $400 million to ensure some level of responsibility?

[*English*]

Mr. Tim Meisner: I just want to be clear that this limit of $400 million is not in place yet.

When you talk about Norway, you are probably referring to the oil spill regime, which is already in place and has been in place for several years.

I think there may be one or two countries, the U.S. being one of them, that don't have limits to the liability in terms of legislation, but most countries do have the international regime in place, and then Canada has the benefit of a separate domestic regime, which on the oil side is the ship-source oil pollution fund. That gives us the $1.4 billion. It's probably about the highest in the world right now, to my understanding.

[*Translation*]

Mr. Hoang Mai: I understand the difference between oil spills, and noxious and hazardous substance spills. Can you tell us what would happen if the costs exceeded $400 million? Who would pay for that?

[*English*]

Mr. Tim Meisner: If the costs were in excess of $400 million, I don't think.... The shipowner, first and foremost, could be liable for those costs through legal processes, but the—

[*Translation*]

Mr. Hoang Mai: You said that ship owners' liability limit was $185 million. So they are liable for covering up to $185 million in damages. If the cost is less than that, good for them; if it is more, the ship owners would be covered through an international fund. Our country decided, in compliance with international conventions and domestic legislation, that the maximum limit would be $400 million. However, if the damage exceeded $400 million and was, for example, $1 billion, who would cover the additional $600 million?

[*English*]

Mr. Tim Meisner: First and foremost, I think the first step would happen at.... Let me be clear that the ship's liability insurance is $185 million, so that would kick in. Then you get the rest, up to $400 million, whatever the difference would be. Should there be an excess of claims for that, it would be, as a first step, pro-rated among the claimants. I'll use a number of $500 million. They would all get 80% of their claims and then be spread out accordingly. There is always the option in a particular case for a government to decide to support an additional claim, but there is no requirement to do that.

[*Translation*]

Mr. Hoang Mai: My question is not about refund claims. I am thinking of situations such as the Lac-Mégantic incident. The government had to pay for the damage because the company in charge went bankrupt or did not have sufficient liability insurance.

The case we are discussing has more to do with marine liability. Unless I am mistaken, Canadians would have to pay. If the liability limit is $400 million, and the cost exceeds that limit, someone else would have to pay. Since the government would want to eliminate the pollution caused, it would pay for the clean up. At the end of the day, Canadian taxpayers would pay for that. Am I wrong?

● (0920)

[*English*]

Mr. Tim Meisner: No, I think you're absolutely right, but in the first case I would say on the marine side there's never been any chemical or hazardous or noxious spill even approaching the $400-million limit. Also, as I mentioned, there's no requirement for the government to step in if anything happened to exceed, in a rare case, $400 million. It does have the option to do so if it chooses to do so through decisions, but there's no requirement through this legislation to do so if it is exceeded.

The Chair: Mr. Mai, your time has expired.

Mr. McGuinty, you have seven minutes.

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

I'd like to pick up where my colleague left off, Mr. Meisner, if I could.

Do these amendments to the Marine Liability Act that you're addressing here today apply to diluted bitumen?

Mr. Tim Meisner: No. [*Inaudible—Editor*] I'll refer to my....

Mr. David McGuinty: I ask only because on page five of your brief it says it includes liquefied natural gas, or maybe it's the international HNS convention that applies to liquefied natural gas, propane, refined fuels, and other dangerous cargoes.

Mr. Tim Meisner: I'm going to refer to my colleague. The question is very complicated between the current regime in place now for non-persistent oils and this one for persistent oils. I'll ask François Marier to answer your question.

Mr. David McGuinty: Does it apply to fossil fuels writ large, or does it apply to diluted bitumen?

Mr. François Marier (Manager, International Marine Policy and Liability, Department of Transport): The convention applies to 6,500 substances, including oils. Those include persistent oil in so far as we're talking about loss of life and personal injury claims. It also applies to non-persistent oils, which are usually refined fuels, like jet fuel and gasoline.

If we're talking about things like condensate, then yes, that is a hydrocarbon that is a refined fuel of some sort.

Mr. David McGuinty: Let me just ask in plain English so we can understand this.

Presumably the government's plan is to have a pipeline going across western Canada. We're going to be shipping diluted bitumen and we're going to be shipping liquid natural gas to the west coast of British Columbia. We're going to put this on boats and we're going to ship this around the world. Is that right?

Mr. François Marier: Yes.

Mr. David McGuinty: These measures here intend to try to tighten up overall the regime that addresses this new circuit. Correct?

Mr. François Marier: Yes.

Mr. David McGuinty: If a ship spills oil off the coast of western Canada, what's the net effect of these changes now?

Mr. Tim Meisner: I think we're getting into a bit of confusion between what this bill does in terms of the Marine Liability Act and what the world-class oil spill pollution regime we're working on is. If you're talking about oil, there's a separate regime already in place.

Mr. David McGuinty: Right. So this has no bearing on that regime at all.

Mr. Tim Meisner: It has no bearing on that regime at all. This is basically focused, as François said, on hazardous and noxious substances, which for the most part are chemicals and liquid natural gas. If you're talking about the carrying of oil, there's a separate regime that addresses that.

Mr. David McGuinty: You say in this brief that one of the unique features is the fact that we're going to have split responsibility now.

Mr. Tim Meisner: That's right.

Mr. David McGuinty: It's going to be split between cargo owners and shipowners. Is that correct?

Mr. Tim Meisner: That's correct.

Mr. David McGuinty: Shipowners will have strict liability up to a maximum. Is that correct?

Mr. Tim Meisner: That's correct.

Mr. David McGuinty: Is that $185 million?

Mr. Tim Meisner: That's the maximum.

Mr. David McGuinty: The cargo owners will draw on the HNS fund. Is that right?

Mr. Tim Meisner: The cargo owners will be funding the HNS fund.

Mr. David McGuinty: They fund it, up to a maximum of $400 million.

Mr. Tim Meisner: They do, up to $400 million.

Mr. David McGuinty: Is Canada leading any initiative internationally, multilaterally, or at the IMO to try to increase that number from $400 million to, say, $2 billion?

Mr. Tim Meisner: On the chemical side, I would say no. This is a fund that Canada led to get to the $400-million limit and actually to get that convention in place in the first place to where we are today.

Mr. David McGuinty: When was that?

Mr. Tim Meisner: I think the convention was actually signed around 2010. There was a lot of work leading up to the signature in 2010 over, I'd say, five to ten years. It actually started back in 1997.

Mr. François Marier: It goes all the way back to 1984.

Mr. Tim Meisner: Okay, I'd say in recent history, from about 2005, this convention was being discussed.

Mr. David McGuinty: So Bill C-3 does not address anything with respect to the liability or responsibility provisions for shipowners or owners of oil who are shipping oil off the west coast of Canada.

Mr. Tim Meisner: No, but the Marine Liability Act already includes provisions to address oil being shipped off the west coast. There's already a regime in place.

Mr. David McGuinty: As my colleague mentioned, the latest study out of Washington, D.C., now concludes that the overall costs for the BP spill in the Gulf of Mexico, including liability, litigation, and fines, is just over $30 billion. That's $30 billion. The costs for the cleanup in the Kalamazoo in Michigan apparently are approaching $5 billion. And of course, we have no idea of what other costs are in other situations.

Is there a reason why the government.... Do you have any idea of why we're not strengthening other parts of the regime and why they're not being woven into Bill C-3?

● (0925)

Mr. Tim Meisner: First and foremost, the government does have a parallel initiative to look at provisions to increase the oil spill response regime. As my colleague Mr. Lachance mentioned, we're working towards a world-class tanker safety system. The government announced certain measures last spring towards that system.

They've also announced a series of reviews that would be undertaken to improve the system. Most of those reviews have come to a conclusion this fall.

One of those was a review of the compensation and liability regime in place for oil spills as well. That is making some recommendations for improvements to that regime, which would be subject to a further amendment to this bill, so it's not included in this bill.

Mr. David McGuinty: From an overall liability perspective in Canada around transportation and liability, is this new partnership between cargo owners and shipowners something unique?

Mr. Tim Meisner: It already exists in the MLA for oil spills, and for the current regime we have for oil spills.... I think you were referring to the Gulf of Mexico and Kalamazoo, which were oil spills, not chemicals. Just to be clear, too, when you refer to the Gulf of Mexico, what we're talking about here is oil spills from ships. That was an offshore rig, so it's not really comparable in terms of what could happen.

The regime in place for ships in the Marine Liability Act now is a very similar partnership between the shipowner and the cargo owner, where there is liability insurance that the shipowner has to carry, and then there's access to an international fund. On top of that, Canada has a unique domestic fund, which I think only one other country has.

In terms of our current liability package of about $1.4 billion, I think I can safely say that it's probably the highest amount in the world today. Having said that, we still have a study that suggests some improvements that could be made to that oil spill regime, which would be subject to further amendments that are not included here today.

Mr. David McGuinty: Do any of these measures here today apply to any kind of activity in Canada's Arctic Ocean?

Mr. Tim Meisner: The scope, yes.... The Marine Liability Act would apply to the Arctic area as well. It's pan-Canadian.

Mr. David McGuinty: What kinds of activities in the Arctic are we talking about?

Mr. Tim Meisner: Whatever this bill covers: if those 6,500 substances were being carried in the Arctic, it would cover those 6,500 substances as well.

The Chair: Your time has expired, Mr. McGuinty.

Mr. Watson, you have seven minutes.

Mr. Jeff Watson (Essex, CPC): Thank you to our witnesses for appearing today.

I was looking at the speaking notes related to amendments to the Canada Shipping Act. The final paragraph begins as follows, “In conclusion, these amendments are an important first step towards achieving our goal of establishing a World Class Tanker Safety System in Canada.”

If you'll permit me a moment to correct the record, it's actually not the first step but one in a series of actions and steps already taken by our government, including increasing the number of inspections on all foreign tankers, and increasing funding for the national aerial surveillance program in order to keep a watchful eye on tankers moving through Canadian waters. Also, I know that there's increased scientific research on non-conventional petroleum products and systems of navigational aids. There's a number of steps that we've taken, so this may be, more accurately, sort of the first legislative step related to our move to a world-class tanker safety system in Canada.

You mentioned, Mr. Meisner, a review that's been undertaken of compensation regimes. Was that related simply to the question of oil spills or to HNS or both?

Mr. Tim Meisner: That particular piece of work was part of the work we are doing under the world-class tanker safety system, so it was pertaining to the compensation liability for oil.

Mr. Jeff Watson: For oil. Exactly, which is why those amendments wouldn't be contained in a bill like this currently, this bill focusing on our ratification, if you will, or our ability to ratify the HNS convention around chemical spills. Okay.

Just so I understand this with respect to polluter pays, in the event of a chemical spill that would exceed the $400-million threshold, the polluter still pays for that. The question is, what or how much compensation comes back to them? Is that fair enough to say?

Mr. François Marier: Well, the package is there from both the shipowner and the international fund. What happens afterwards in terms of whether that amount is exceeded, as I think Mr. Meisner said earlier, is that the equal treatment of claimants is a very important fundamental principle here in these regimes. Claims are automatically pro-rated, and then the government has options before it to decide what it wants to do afterwards.

● (0930)

Mr. Jeff Watson: The question I'm driving at is this: if it's a $500-million spill, who pays the additional $100 million?

Mr. Tim Meisner: Maybe I'll jump in, as this is very similar to the question I had previously.

Mr. Jeff Watson: I just want this to be clear in terms of an answer.

Mr. Tim Meisner: Yes.

If there's an amount of $500 million in claims coming in, and they're all valid claims, the first step, as Mr. Marier said, is that all claimants are treated equally. They would probably get 80¢ on the dollar as a first step.

If the government decides that it wants to step in and make up the difference, it can choose to do so, but there's no requirement for that to happen.

Mr. Jeff Watson: If it doesn't step in, who pays the rest?

Mr. Tim Meisner: The ones that experienced the damage would pay the difference, yes.

Mr. Jeff Watson: Thank you. Okay.

I have some questions on the Aeronautics Act amendments related to civilian and military crashes.

Was that covered at all today? Nobody made an opening comment on that.

Is anybody prepared to answer questions on that?

Mr. Dave Dawson: They're not here today.

Mr. Jeff Watson: Fair enough.

Moving along, I have a question on the administrative monetary penalties. Currently, as you stated, the only two options for dealing with non-compliance are to either prosecute a regulatory infraction through the court, or suspend the certification of non-compliant response organizations.

While that may be a costly route, it is a very serious route, if you will, in terms of expressing enforcement. Are you concerned at all that the inclusion of administrative monetary penalties could be perceived as either weakening the approach to enforcement or simply allowing administrative monetary penalties to be the cost of doing business, if you will, for those who may violate, or polluters? Is there any concern there in that regard?

Mr. Sylvain Lachance: No, sir. Those options are still open to us, either decertification of the response organization or prosecution in court. Those are still open, but there's nothing in between right now, between doing nothing and decertification or prosecution in court. We are adding new tools to our tool kit to enforce things that need enforcement but may not require going to court or decertifying a response organization. It allows us to be a lot more effective in an enforcement.

Mr. Jeff Watson: What kind of violation would a $250 fine be for, and what kind of violation for a $25,000 fine? I mean, $250 on its surface doesn't sound like much. What would that be for?

Mr. Sylvain Lachance: Of course the nature of those infractions will be set out in regulations. We'll consult our stakeholders and everybody when we need to set those classes of infractions.

However, just off the top of my head, for an outboard motor that's not working or that should be working, $250 sounds like something that could be accurate.

For $25,000, it could be, let's say, a major piece of equipment that's not working; an accumulation of infractions or violations that need redress and are more serious; equipment that is in bad shape and so on; not having proper equipment; not having the quantity of equipment they say they should have; and so on.

As I said, though, all those infractions will have to be determined through regulations.

● (0935)

The Chair: Thank you, Mr. Watson. Your time has expired.

Mr. Braid, you have seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you to our officials for being here this morning.

Mr. Dawson, I will start with you and the aviation industry indemnity act.

Could you outline what and who would trigger the process for the minister to issue an indemnity? How would that process work?

Mr. Dave Dawson: The key word here is that it's a contingent liability, so it's in place. Assuming there is an event, the person who is harmed brings forward a claim, and that claim is assessed as to whether or not it's valid. Then the process would be, as for any other insurance claim, to look at the actual detailed claim and evaluate it and process it. The money would come out of the central revenue fund.

Mr. Peter Braid: Is this always done after the fact?

Mr. Dave Dawson: It's done after the fact.

Mr. Peter Braid: Is there any sort of proactive mechanism if we know that an aircraft is going into a high risk situation, or is it all after the fact?

Mr. Dave Dawson: That was what I was trying to outline in the case where the government wants to send a jet into a place to bring out some Canadian citizens or something. It's a contingency. It's there if something happens. It's there if needed. Then if something did happen, all of the money would be straightened out after the fact.

Mr. Peter Braid: Very good. What was the impetus for these particular changes?

Mr. Dave Dawson: In 2001, as I described in my paper, the industry withdrew. It slowly came back, but the costs are still quite high and it's difficult for the air industry participants to obtain this insurance at a reasonable rate.

The other factor is that this has been going along with the royal prerogative—I think it's been renewed about 10 times—and there's pressure to stabilize it and come up with a longer term solution that allows the minister, if needed, to act on fairly short notice.

Mr. Peter Braid: Have there been more recent geopolitical situations—

Mr. Dave Dawson: —that would drive this?

Mr. Peter Braid: —that have inspired this?

Mr. Dave Dawson: No.

Mr. Peter Braid: Okay.

Mr. Dave Dawson: It's just been dragging on.

Mr. Peter Braid: You mentioned an amended indemnity. In what cases would an indemnity be amended?

Mr. Dave Dawson: There's a program in place right now, for instance, and if this bill passes and we go live January 1, 2015 or 2016, let's say we pick some numbers, and we say industry must pay for the first $100 million and then everything after that.... That's given today's conditions.

If the conditions, for example, got worse and the insurance became more expensive for them, the government might say, “We should kick in some more money to help it be more feasible to them”. Opposite to that, the insurance rates in the market could go down, in which case the government could say, “Why should we pay money towards this problem? You guys are on your own. We amend the program.”

Mr. Peter Braid: What's been the reaction of stakeholders with respect to these proposed changes?

Mr. Dave Dawson: They think it's the right idea going forward.

Mr. Peter Braid: Who are those stakeholders?

Mr. Dave Dawson: They are airlines, airports, Nav Canada, and all of the service providers to those.

Mr. Peter Braid: Great. Thank you.

Ms. Nakatsu, I have a quick question for you. I want you to feel included as well today. Thank you for being here.

I suspect that this very simple change ensuring the effective date for the GIC appointment for those appointed to port authorities is very standard. Is that the case with many other GIC appointments?

Ms. April Nakatsu: Yes.

● (0940)

Mr. Peter Braid: The effective date is included?

Ms. April Nakatsu: All the other GIC appointments in the Transport portfolio are effective when the GIC makes them effective. The port authorities are currently the only exception to that rule.

Mr. Peter Braid: This is a cleanup, if you will.

Ms. April Nakatsu: That's right.

Mr. Peter Braid: Very good.

Mr. Meisner, regarding amendments to the Marine Liability Act, I also wanted to ask you about stakeholders.

You specifically mentioned in your opening remarks that stakeholders are very supportive of these proposed amendments. Again, could you outline who those stakeholders are, and also explain why the stakeholders are supportive of these proposed amendments?

Mr. Tim Meisner: The stakeholders, I think, can be put into two categories. The first is the shipowners. We consulted quite extensively with the marine sector and shipowners through their various associations, such as the Canadian Shipowners Association and the Shipping Federation, and I think they were very positive. The second category would be the importers and exporters of chemical products or HNS that are covered, and again they are very supportive.

I think basically, to cut to the chase, they would be supportive because it gives them access to an international fund that is shared among other countries and contributed to so that any particular country's shipowner would not have to foot the full bill. It would be spread out among many parties. It's looked at as a positive sharing of the potential pollution among the international shipping companies and the regime.

Mr. Peter Braid: Is the international fund a brand new mechanism, or how recent is it?

Mr. Tim Meisner: There's an existing mechanism called the international oil pollution compensation funds, the IOPC, which is run out of London. It handles the oil spill regime. In all likelihood the secretariat that handles those types of administrative matters would also handle the HNS funds as well.

Mr. Peter Braid: You mentioned that Canada has been showing some leadership in terms of driving this fund forward. Could you elaborate on that?

Mr. Tim Meisner: I would say it would be leadership in driving the convention forward. The convention was first tabled and agreed to in around, I think, the mid-1990s. Certain countries presented some challenging issues with regard to enabling it to come into law, so Canada took the lead in bringing these countries together to try to resolve the issues that were outstanding and came up with an agreement that actually turned into the existing convention. It has had a pretty good reception from other countries across the world.

Mr. Peter Braid: As I understand it, with these amendments, the principle of polluter pays is fundamental. There will be increased insurance coverage. You mentioned an existing domestic fund, and now there will be access to an international fund. Is that correct?

Mr. Tim Meisner: That's correct. Just to be clear, the domestic fund would not be accessible for all products, but just for the persistent oil products.

Mr. Peter Braid: Thank you.

How would we know which mechanism or which fund to use, and in what cases might they all potentially apply or interact?

Mr. Tim Meisner: This is what the administration of the IOPC in London, the organization that I mentioned, would be setting up: who would be paying; who would be levied. It would be their responsibility. The 6,500 substances that are covered are under IMO provisions, and the IOPC is linked with the IMO. They, along with the insurance companies, have the administration to figure out who pays, when, and into what fund.

Mr. Peter Braid: How much time do I have left, Mr. Chair?

The Chair: You are over time.

We'll now move to Mr. Sullivan for five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you, witnesses.

The overview you've provided us, attached to the clause-by-clause analysis, states very clearly that the intent of the act is to set limits of liability. I guess that's what we're hearing, that there's an upper limit of $400 million essentially. It may be a little bit more than that in terms of the hazardous and noxious substances. We'll get to ship-source liabilities at some point in the future when that bill comes forward.

The expert panel on the ship-source liability regime has suggested as their recommendation 23 that the current limit of liability per incident—they're talking about the ship-source oil pollution fund—should be abolished. The fund should process and pay for all admissible claims subject to the consolidated revenue fund's consent to loans in favour of the ship-source oil pollution fund for amounts sufficient to allow all admissible claims to be paid to claimants.

The loans would then be reimbursed with interest to the consolidated revenue fund from future revenues of levies on oil transported by ship to, from, and within Canada. Would that be an appropriate way, if we can amend this bill, to put in a more effective limit on unlimited hazardous and noxious substance liability?

● (0945)

Mr. Tim Meisner: I have to clarify one point. You mentioned the limit of liability being $400 million. The limit of liability would be the $185 million, which would be the insurance that the shippers are prepared to carry.

Also, you mentioned the tanker safety expert panel's report, which, I believe, focused basically on preparedness and prevention recommendations. It also made a couple of recommendations pertaining to liability and compensation. We also had a separate study done on specific liability and compensation that made similar recommendations on removing the limit of liability. Those recommendations are still under review, and no decision has been made yet as to whether we're going to move forward with those recommendations or not. I think it would be premature to say whether that recommendation could even be applied to the HNS as well.

Mr. Mike Sullivan: Okay, but the point is that one of the things they say in their executive summary is that the taxpayer shouldn't be on the hook for pollution caused by transportation of noxious substances or of oil. We “should not bear any liability for spills in Canadian waters”.

You've admitted that greater than $185 million or $400 million, I'm not exactly sure which, would in effect be borne by Canadian taxpayers, whether it's through the government itself—the provincial, municipal, or the federal government—having to pay for a cleanup like the one going on in Lac-Mégantic now, or through individuals, with Canadian taxpayers paying themselves for damages that are beyond damages covered by the liability limits of $400 million.

Why would this recommendation from the expert panel not be a good thing?

Mr. Tim Meisner: Well, as I said, the expert panel made a recommendation specifically that there shouldn't be limits of liability, and how to do it, and we're examining that recommendation as it pertains to oil.

This pertains to chemicals and hazardous and noxious substances, so their recommendation really wasn't pertaining to this.

That particular panel is currently doing a review of HNS and will make further recommendations to improve the HNS system, and then we can take them under consideration when they conclude their report later this year.

Mr. Mike Sullivan: Are we premature with this modification to the HNS system?

Mr. Tim Meisner: I don't think you're premature, because I think what you're giving Canadians access to under this bill is $400 million should an incident happen. That's $400 million which they don't have access to today.

Mr. Mike Sullivan: We don't have access to HNS today.

Mr. Tim Meisner: No. There's no regime in place for HNS. This is a first step.

Mr. Mike Sullivan: Even though we're a signatory to the—

Mr. Tim Meisner: Well, the convention hasn't come into force yet.

Mr. Mike Sullivan: Okay, so this is a little improvement but it's not the best improvement is what I guess—

Mr. Tim Meisner: I guess it's all in the eyes of the beholder whether it's—

Mr. Mike Sullivan: Okay—

Mr. Tim Meisner: It was based on international discussion and....

Mr. Mike Sullivan: With regard to oil handling facilities and preparedness and prevention, etc., how will Transport Canada go about inspecting these facilities to ensure their compliance with the regulations when there is a new facility being planned or an existing facility is growing or changing?

We've heard from the Auditor General about rail safety that Transport Canada hasn't been doing a very good job of administering the rail safety regime. We want some assurances, I guess, or Canadians want assurances, that this suggestion that there needs to be compliance with a regime for oil handling will actually have, from Transport Canada, enough people, resources, and inspections to actually confirm compliance. How will that happen?

Mr. Sylvain Lachance: Well, once the regulations are in place, we'll have our workforce. Our inspectors will be equipped with policy procedures, work instructions, and training to go about and inspect the oil handling facilities.

The Chair: Your time is up, Mr. Sullivan.

Ms. Young, you have five minutes.

Ms. Wai Young (Vancouver South, CPC): Thank you, witnesses, for being here today.

I'm from Vancouver, British Columbia. This is obviously of high interest both to my constituents and to the rest of Canada.

I think, as Mr. Sullivan has implied, that the regular person has no idea of what is in place and what we're striving to do in developing this world-class system. Might you be able to give us an overview of what's currently in place and what the government is doing towards working on developing this world-class system?

Mr. Tim Meisner: Just to be clear, when we're talking about a world-class tanker safety system, it's pertaining to the transport of oil by ships. We have developed a framework to define what a world-class system would be, and that framework consists of three components.

The first pillar is prevention measures, doing everything we can to possibly prevent the spill from happening in the first place. Those measures are contained in terms of the Canada Shipping Act, such as safety for ships, safety for crew, and provisions for oil handling facilities, ones that are existing and ones that are included in what's being proposed today. It also includes increased inspectors for inspections of ships, of tankers. It includes a program of national aerial surveillance, where we have an aircraft flying over ships to see that they are appropriately equipped to carry the fuel. Then the coast guard component of that would be to provide a safe navigation system. That's all in the first pillar of prevention.

The second pillar is preparedness and response. We currently have a regime in place where private sector response organizations, funded by the cargo owners, are prepared to respond to a spill, should it happen. That was the subject of the panel's report that was referred to earlier. They were commissioned to review our preparedness and response regime. In December they issued a report with 45 recommendations to the minister as to how to prepare and improve our response capacity in Canada.

Just as an aside, their basic recommendation is going from one where we have a standard capacity of 10,000 tonnes across the country to one that is more locally reflected based on the risk and conditions in a local area.

The third pillar that we have going towards a world-class tanker safety system is our liability and compensation regime.

Again, the first pillar is preventing the spill. The second is being prepared to clean it up if it should happen. The third is having enough compensation for those that may be impacted from a spill in the event it happens. The panel made a couple of recommendations on that one. We also have a separate study that does recommend improvements to our liability and compensation regime for spills from ships.

● (0950)

Ms. Wai Young: Just to be clear, because there seems to be some confusion between oil spills and hazardous and noxious substances, HNS, can you clarify the differences between the two?

As well, what incidents have there been in Canada? Why do you say that $400 million is enough compensation, or enough of a ceiling?

Mr. Tim Meisner: The two regimes are different. When we talk about world class, we're just talking about oil, such as oil handling, bitumen, oil-going ships. The one that we are proposing today for the Marine Liability Act is very narrow. It's just chemicals or hazardous and noxious substances and just the liability aspect. It doesn't include prevention measures or response measures.

As to why I say $400 million is enough, I won't categorically say it's enough; what I will say is that internationally there's never been a chemical spill that has exceeded that amount in terms of claims.

Ms. Wai Young: Just to be clear, are you saying “never”?

Mr. Tim Meisner: I believe never. That's internationally.

Ms. Wai Young: What is the average, or perhaps the highest?

Mr. François Marier: I think it depends on where the spill took place. If you're looking at spills outside of the United States, there hasn't really been a spill that has exceeded even $200 million.

Mr. Tim Meisner: This is not oil. This is hazardous and noxious substances.

Ms. Wai Young: Right.

Mr. Tim Meisner: I think you had another question, but I can't remember what it was.

Ms. Wai Young: I'm wondering how many current oil handling facilities there are in Canada.

The parliamentary secretary is saying it's about 400. Is that approximately the amount?

Mr. Tim Meisner: Yes, it's about 400.

Ms. Wai Young: Coming at this from an average person on the street, because I hear a lot from the average person on the street, when people are transporting substances in trucks, for example, they drive through weigh stations and they get checked. They're ticketed if things are amiss, etc.

How do you propose to do that for a tanker system?

Mr. Tim Meisner: Tankers, through the Canada Shipping Act, are required to be inspected on their first visit to Canada and annually thereafter. There is a regime in place. In the announcement we made last March, we increased the number of inspectors to be able to make sure that this adheres to our regulations.

They are inspected at least annually when they come to Canada. That would be their weigh station, if you will, when they come into a port.

The Chair: Ms. Young, your time has expired.

We now move to Mr. Chisholm, for five minutes.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): I appreciate certainly the principle that's at issue here, of polluter pay. I want to direct a couple of questions in terms of what they're paying for.

In the case of a spill of hazardous and noxious substances by a ship, would the vessel owners be responsible for the economic damages to tourism operators or to the fisheries as a result of the spill?

● (0955)

Mr. Tim Meisner: Those are eligible categories, so that they would have to put a claim in, and if that claim was accepted, they would be paid out for their damages, or at least a portion thereof.

Mr. Robert Chisholm: What about other damage, like ecological damage, that was identified? That would be—

Mr. Tim Meisner: I think ecological damage, to the extent that you can put an economic value on it, is part of the claim as well.

Mr. Robert Chisholm: Clauses 65 and 67 of the bill talk about eliminating the provisions respecting pollution prevention officers, while retaining provisions concerning pollution response officers. Would you explain? Are the duties being combined, and if so, why?

Mr. Sean Payne (Manager, Environmental Response Systems, Department of Transport): As part 8 stands at this point in time, we have pollution response officers and pollution prevention officers. Response officers are a specific designation for coast guard officers who are responding to a spill, which gives them certain authorities in the event of a situation where they're responding and directing and so forth. Pollution prevention officers are the Transport Canada inspectors and employees that actually do the work in relation to oil handling facilities.

What we're doing, basically, is harmonizing in the act the authorities that exist right now as pollution prevention officers with our marine safety inspectors, so although the PPO designation will disappear from part 8, those authorities will be harmonized with our traditional marine safety inspectors in the act.

Mr. Robert Chisholm: Are you talking about reducing it? If the responsibility was there with those positions or there were similar positions with the coast guard and similar positions with Transport Canada, are there now only going to be positions with the coast guard?

Mr. Sean Payne: No.

Mr. Mike Sullivan: Are those positions that were under Transport going to be moved over to the coast guard?

Mr. Sean Payne: No. This is more of an administrative move. The response officer, the PRO designation, will stay. It will remain. Nothing changes for the Canadian Coast Guard, and nothing in theory really changes for our inspectors in the field, other than the fact that they won't be called pollution prevention officers anymore. Their authorities will be harmonized under the marine safety inspector authorities.

Mr. Robert Chisholm: All right.

We've referred to the tanker safety expert panel. In their report, they observe that the national standards for Canada's preparedness and response regime make it inflexible and inappropriate for different risk-facing coastal regions.

I'm particularly interested in this, because the environment commissioner made reference to the problems with regard to Transport Canada, the Canadian Coast Guard, and Environment Canada not having adequate plans in place to prepare for and to respond to pollution incidents on all three coasts. It's increasingly important on all three coasts, but in particular in the Arctic, where marine travel and transportation are increasing at a remarkable rate.

To what extent does this bill address the expert panel's concerns and the recommendation for a risk-based area response planning model?

Mr. Tim Meisner: I can answer that. The panel, which is supported by a risk assessment done by the department, concluded that our current standard of having 10,000 tonnes of response capacity throughout Canada was inadequate based on the risk, and is recommending that we go to the area response plans. They are plans in a particular area. I think they are recommending that there be 29 or 30 across Canada and that they be included in further legislation.

This legislation does not address the panel's recommendations. They were commissioned last year to look at the response regime for oil. Their recommendations, all 45 of them, are currently under consideration.

To be clear, they were only tasked with looking at, I guess, two of the three oceans; they were looking at work under 60. The panel is currently doing work for the Arctic as we speak, and is consulting and doing some analysis on north of 60, so they will submit a second report later this year on their recommendations for a regime north of 60.

The Chair: Thank you, Mr. Chisholm. Your time has expired.

● (1000)

The Chair: Mr. Watson.

Mr. Jeff Watson: Mr. Chair, on a point of order, the proceedings here are related to Bill C-3.

I appreciate members' interest in probing officials about what their thoughts are on the expert panel's report into tanker safety, but I think the officials have been clear. There will be additional action down the road in which those questions will become relevant, but they're not relevant to the question of hazardous and noxious substances currently, although I will say that Mr. Sullivan's question at least made a comparative in an approach to one for HNS. However, general questions about the panel's response to world tanker safety and its recommendations related to oil are not in Bill C-3.

I thought the purpose of this meeting was to actually have questions about Bill C-3.

The Chair: I do have to remind members to stick to the topic and remind everybody that witnesses, especially from the department, are compelled only to answer certain types of questions. I'm not going to get into the details. I'm sure all of you are aware of that.

Mr. Chisholm.

Mr. Robert Chisholm: Mr. Chairman, I think it's important to recognize when we talk about these spill events, whether they be noxious substances or otherwise, that it's been recorded that up to 60% of all spills are in fact chemicals, noxious substances. They pose serious risks to our coasts, and it's important that the witnesses be asked to support what it is this act does to deal with that issue.

The Chair: Point taken, but we are on Bill C-3.

We'll now move to Mr. Toet for five minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, officials, for being with us today.

I want to go back a little bit to the hazardous and noxious substances convention, which is an international convention. Can you give us an idea of how many countries are participating in this? Also, what percentage of hazardous and noxious substances are actually covered under this convention? Are there any exceptions? Are there goods that would move without necessarily being covered?

Mr. Tim Meisner: I'll answer the second part first. As I mentioned, the IMO, the International Maritime Organization, tracks 6,500 substances now, which they have classified as dangerous goods or hazardous and noxious substances. This would cover all those 6,500 substances should they be transported in Canada. That's also an evergreen list that is modified from time to time; as products became one of those, they would also be covered under this regime.

In terms of the number of countries that have actually signed on to the convention, was that the first part of your question?

Mr. Lawrence Toet: I mean the number, but also the percentage of what that covers as far as the chemicals that are moving are concerned.

Mr. François Marier: Currently, eight countries including Canada have signed the convention or the protocol, subject to ratification. Signature doesn't mean ratification. It's just a signal of intent.

The important point to remember here is that this convention is a contributory convention, which means there are certain requirements for it coming into force. One of those requirements is not just the number of states that ratify the convention, but also the amount of contributing cargo that will be part of the fund. There's a magic number in the convention, and that's 40 million tonnes.

Once you have those numbers, 12 countries and 40 million tonnes of contributing cargo, being reported by those countries to support the fund, then you trigger the entry into force. That's how it works.

There are a number of countries, particularly in the European Union, that have very large ports that receive a significant amount of HNS, Rotterdam, for example, that could make up almost that 40 million tonnes right there.

Mr. Lawrence Toet: It's still a work in progress to some degree, but it does sound as though the vast majority or almost all of any goods coming to Canada or into our waterways would be covered under this, so there are no substances that would be coming from any other place that would be kind of outside the parameters.

● (1005)

Mr. François Marier: It's also important to remember that Canada is more of an exporter than an importer of hazardous noxious substances. There's a key advantage here. The contributions to the fund are placed only on importers and receivers, not on exporters.

Mr. Lawrence Toet: Thank you.

I just wanted to follow up quickly, Mr. Meisner. There have been quite a few questions on this $400-million cap. I think it's important that we have a clear understanding that this isn't a number somebody has pulled out of their hat. This is a number that has been come to. I think it would really be helpful for us to have a good, clear understanding of where this number came from, and why it's placed where it is.

There has been some conversation on this, and there seems to be this sense that maybe we have to look at it as being an expanded number, but I get the sense that along with our international partners who are part of this convention, we have looked at this number and have said that we are fairly satisfied it will cover things off.

Mr. Tim Meisner: That's exactly right. It's a number that we determined through a lot of negotiation and discussion among all the members of the IMO. There are several countries involved. The figure of $400 million was determined to be a good figure that didn't put any undue hardship on those who would ultimately have to pay for it, because there currently has never been a spill internationally that would come anywhere near exceeding that amount.

I would also say that the convention does include a provision to make amendments to that particular number without having to go back to and re-ratify the convention. Should it need to be increased, or even decreased for that matter, there is a provision in there that would allow that to happen.

You're right; it is the discussion of multiple countries. We're one of the countries that signed on to it. This is not a unilateral Canadian $400-million figure, if you will.

Mr. Lawrence Toet: Yes. Those countries would want to protect their taxpayers from improper exposure just as much as we would want to protect our taxpayers.

Mr. Meisner, you also talked in your opening statement about our marine safety regime and record. I wonder if you could expand on that comment a little bit. Again, in terms of these liabilities, we need to have them in place in case there is an incident, but I think we also want to talk about where we are with regard to the percentage of these incidents as compared with the amount of goods being shipped.

Mr. Tim Meisner: I think everybody knows that in Canada, for either oil or chemical, I don't think we've ever had what we would classify as a major spill, i.e., 10,000 tonnes. When we look at the oil regime, however, everyone points to what happened with the *Exxon Valdez*, so there's no guarantee that there wouldn't be a spill.

Our safety record is imposed through the Canada Shipping Act, and I think the record speaks for itself. The fact that we have no major incidents shows that we have a strong safety regime in place in terms of the requirements that a ship has to have, the requirements that the crew has to have, and the prevention activities that the ship and the oil handling facilities have to undertake.

Having said that, as I said, there is still no guarantee that you will never, ever have a spill, and thus our provisions in here. Also, on the chemical side, we would make sure there was a liability regime in place under the MLA to ensure that in the rare event it did happen, there would be coverage for those damaged by the spill.

The Chair: Your time has expired, Mr. Toet.

We'll move to Mr. Komarnicki, for five minutes.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): I have a couple of questions. First, with the aviation industry indemnity act, I know that the insurance markets, you say, tend to have some difficulty about how much it's going to cost or how much they're prepared to cover. Of necessity, perhaps, that means somebody else has to step in to cover the indemnity or the risk, which I take it would be generally the general revenue of the country, or the government would have to step into place.

The government would have to cover it in any event, so does it make a difference whether you have ministerial approval versus a royal prerogative? What are the differences between the two? How much is involved in one as opposed to the other? If you're going to deal with ministerial authority, are there some objective baselines or parameters under which an authority could be issued or not, and if not, is there any recourse to a minister's decision on the authority subsequently?

That's for whoever would like to answer.

Go ahead, Mr. Dawson.

Mr. Dave Dawson: It's a contingency. I want to repeat that. The industry has to purchase on the market its own insurance up to a certain level, and the government has stepped in with the current program because it's deemed that the amounts of the market rates aren't feasible for the industry. Also, the fact is that our American friends have a program in place where they in fact have almost a full insurance industry of their own. Those two factors together have made us continue this program.

Going forward it's important, should this proposed act pass, that the minister have the powers and be accountable to the country and to you for them. We designed it so that he could react more quickly, because right now, if something were to happen or there were a change required, it's a significant amount of time.... I think you can appreciate that it's under royal prerogative, but that's not an instantaneous action, by any measure.

Also, in the case of my example of wanting to send a plane to a foreign country to rescue Canadians, that too has been proven to be too much of a burden under the current program. There was an example where it took a great amount of time to respond to that.

I think the measures that will be in place going forward would be that the minister would establish a rate or amounts, contributing factors, define the program, and then on an ongoing basis would report back to cabinet. If something were to happen or it was decided to make a change to the program, within 90 days the minister would come back and say, “Here's why I changed it.” On a more ongoing basis, assuming no changes were made, he would report back to cabinet on a two-year basis and explain that.

● (1010)

Mr. Ed Komarnicki: When I asked you if there were any baseline requirements before the authority is issued, is the answer “not really”? If the decision is made to put a particular third party at risk with no insurance, then automatically would the minister have to issue the authority? Is that how it would work?

Mr. Dave Dawson: Yes. In the instance where we are asking a plane to go on Canada's behalf.... Is that the example you're...? Yes, then it is sort of a blessing: you are covered, go.

Mr. Ed Komarnicki: All right.

Under the amendments to the Marine Liability Act, obviously the shipowners or the shippers would have a responsibility for contributions to the fund however it's arrived at. For the international fund itself, which is involved as well, are there any concerns or difficulties in terms of who contributes? How do you track who contributes? Are there some that don't but should?

Mr. Tim Meisner: Just to be clear, it is, as I said, a joint responsibility between a shipowner and the cargo owner. The shipowner's responsibility is having sufficient insurance to pay for liability, should it happen. The contributions to the fund would be the cargo owner's responsibility. The way it's set up through the convention, the contributions to the fund would only happen after the fact.

As Mr. Marier mentioned earlier, there's a series of steps that have to be in place before that happens. First is the legislation. Second, we would need to have regulations that impose reporting requirements on those who would be responsible for paying. Then we'd have the years of receipts of those responsibilities. Should an incident happen, those parties would be billed by the international organization after the fact. All the countries would have their importers and exporters billed.

Mr. Ed Komarnicki: You would have a system in place to track all of the cargo owners and all of their transactions, and then the assessment would be made after the fact on.... Is it a proportional basis on the amount of usage, value, or...?

Mr. Tim Meisner: You would have all the importation of product, and you would have that internationally, so you would divide that by the amount of damages, and they would all pay proportionally across the world.

The Chair: Thank you.

Mr. Mai, you have five minutes.

[*Translation*]

Mr. Hoang Mai: Thank you, Mr. Chair. I will share my time with Mr. Sullivan.

I have a few short questions for you, Mr. Lachance. You talked about 400 oil handling facilities. Perhaps you can tell us later roughly where they are located. In the meantime, I would like to ask you some other questions.

You say that a new monitoring system will be implemented. Training will have to be provided. Can you tell us how many people are currently working on that and how many will be working on it? I am asking this question because, as Mr. Sullivan mentioned, the Auditor General was very critical of Transport Canada regarding its objectives in terms of systems monitoring and rail safety monitoring. I was told that Transport Canada did not have the required resources to achieve its own objectives.

Do you currently have any objectives when it comes to the new system? Could you tell us what kind of resources you have available and how many people are working on that?

● (1015)

Mr. Sylvain Lachance: Once the new system has been implemented, all of our marine safety inspectors will be trained and be able to carry out those inspections. We currently have about 314 inspectors for all of Canada, but that can vary from one day to the next. We are currently in the midst of hiring 50 new inspectors. The inspectors receive operational support from regional offices and headquarters experts.

Mr. Hoang Mai: Can you give us an idea of how the inspectors are spread out among the 400 facilities?

Mr. Sylvain Lachance: We have inspectors everywhere. Of course, since these facilities interface with ships, they are located on the coasts or along the St. Lawrence Seaway. We have some in Newfoundland and Labrador, the Maritimes, Quebec, Ontario, the Prairies, the north and the Pacific region. Currently, our facilities' transfer rates vary between 150 m^3/h and 2,000 m^3/h. Most of the procurement takes place in the Pacific region.

Mr. Hoang Mai: Great.

[*English*]

How much time do I have left?

The Chair: You have two and a half minutes.

Mr. Hoang Mai: I'll donate it to Mr. Sullivan.

[*Translation*]

Thank you very much, Mr. Lachance.

[*English*]

The Chair: Mr. Sullivan will probably get another round.

Mr. Hoang Mai: He'll get another round?

Then I'll take this. Sorry.

[*Translation*]

Can you give us some examples of spills over the past few years, and tell us what happened and how the situation was handled?

Mr. Sylvain Lachance: Spills happen more with regular ships than with oil tankers. A spill may happen during a transfer of oil from one tank to another. A valve may also malfunction and cause a spill. We call those operational spills. That is the kind of spill we are dealing with most of the time.

Mr. Hoang Mai: Okay.

Under the new system, will companies send their prevention mechanism to Transport Canada so that the department can check what has been implemented, or will Transport Canada employees go on site to inspect the facilities?

Mr. Sylvain Lachance: The current system has been in place for about 25 years. This bill aims to increase monitoring powers and ensure better oversight of facilities that receive oil products and load them onto ships. We are working with those interfaces. Our system's current value could be improved. That is what the bill proposes. We are trying to get a better view and better control of those facilities.

Mr. Hoang Mai: You talked about training and changes. How much time do you think will be needed to train all those people? What time frame will be established once the bill has been passed?

Mr. Sylvain Lachance: We have not been waiting for the bill to be passed to start working on that. Currently, we are hiring people and implementing the system. Of course, we will have to adjust the system to comply with the resulting regulations, which are not yet in place. After the consultation process, the regulations will impose certain operating parameters on us, and we will have to take them into account.

Mr. Hoang Mai: Okay. Thank you very much.

Moreover....

● (1020)

[*English*]

The Chair: Your time has expired.

Mr. McGuinty.

Mr. David McGuinty: Thank you, sir.

To Mr. Meisner and the other folks on the panel, just as a matter of information, repeatedly today the words “world-class tanker safety system” have been used. Is this some sort of legal term? Is this some sort of international private legal norm, or public norm? What does this mean?

Mr. Tim Meisner: First and foremost, I'll go back and say that what's before us today in the Marine Liability Act has nothing to do with the tanker safety system.

The world-class tanker safety system is a branding term that we've used to reflect that we want to have the safest system for the transport of oil in the world. We're looking at three pillars: the prevention, the response, and the liability and compensation.

Mr. David McGuinty: Okay. So in March 2013, when the government brought this to bear....

It's effectively a slogan, for Canada, right? It's a slogan.

Mr. Tim Meisner: A slogan, yes, a branding slogan; it's a term for the program we're putting in place.

Mr. David McGuinty: Okay. So for Canadians who are hearing it, I just wanted to debunk any possible misinterpretation of it actually having any other implication than a slogan.

I want to go back to a question my colleague from the NDP raised on the economic damages to the tourism and fisheries industries and to private property, but I want to turn now and talk about, and ask you about, for a lot of Canadians, ecological damage.

What do these amendments do with respect to ecological damage?

Mr. François Marier: It's very similar to the system that exists right now for oil pollution. Environmental damages are covered under this regime insofar as it involves restoration that is actually undertaken. That would also include the need to do any post-spill studies, as we call them, to determine whether or not restoration activities need to be undertaken to restore the environment quicker.

In terms of the principles around the regime, there is a legal framework around this that means there has to be a direct link between the actual losses, the costs, and the actual incident. You have to be able to prove that you've suffered a loss or you've undertaken a cost that is directly linked to the actual incident, to the pollution.

Mr. David McGuinty: How does that causality apply to an ecosystem along the coast of British Columbia? If an individual can prove no direct pecuniary damage to their property or their person, how does this deal with ecosystem services on the west coast?

Mr. François Marier: Again, there already exists about 40 years of claims experience with the IOPC fund in terms of being able to... and there are claims manuals and criteria set out by the international body that governs the fund.

If we're talking about the HNS fund, which doesn't exist yet but would exist in future if it came into force, there would be an assembly of member states that would then, based on the tenets set out in the convention, come up with claims criteria—

Mr. David McGuinty: Let's be practical for a second—I had to cut you off just because of the time—and let's say there is a spill of a particularly noxious chemical on the west coast of Canada. Let's say there is a lot of damage to the coastline or to an island. Who is responsible for that ecological damage, and what remedies are open to Canada to pursue those responsible for the spill, for that ecological damage?

Mr. François Marier: It's important to distinguish between civil and criminal liability. Here we're talking about civil liability. The shipowner is the party that's first and foremost liable under the system.

Mr. David McGuinty: Who prosecutes the shipowner for the environmental damage?

Mr. François Marier: Whoever has suffered the damage.

Mr. David McGuinty: That means the landowner?

Mr. François Marier: If it's private property, yes.

Mr. David McGuinty: What if it's public property?

Mr. François Marier: Then it could be a government.

Mr. David McGuinty: Are there provisions in this bill anywhere at all that talk about revising the way in which we can move against those responsible for spills on public or crown lands?

Mr. François Marier: If public or crown lands are contaminated and there is restoration work undertaken to restore that, if it's demonstrated that the restoration work will accelerate the restoration of the natural ecosystem, then yes. I mean, you can then claim that back to the shipowner, and the shipowner will pay.

We have to remember that this is strict liability, which means that you don't have to prove negligence or fault.

● (1025)

Mr. David McGuinty: I understand that. I'm just confused, because earlier Mr. Meisner was asked the question about ecological damage, and his answer was that you can recover, and I quote, “to the extent that you can put an economic value on it”.

How does Bill C-3 help us put an economic value on ecosystem services?

Mr. François Marier: I think the economic value he was referring to was the cost of doing the actual restoration.

The Chair: Your time has expired, Mr. McGuinty.

We'll now move to Mr. Watson, for five minutes.

Mr. Jeff Watson: Thank you, Mr. Chair.

You say that Bill C-3 is a very important piece of legislation. We've heard already today that it improves on what is currently a non-existent regime for compensation related to hazardous and noxious substance spills and chemical spills in our waters, including those off the west coast. It's important, of course, that we're here working on that particular matter. I think Canadians would consider that to be in their interests.

I understand, Mr. Chair, that radio station CHEK in B.C. is reporting that the chief opposition critic is signing books today, but that aside—

Mr. Robert Chisholm: What does that have to do with anything?

An hon. member: That's a shot at us.

The Chair: Do you want to raise a point of order on it?

Mr. Jeff Watson: —on the marine liability, the world-class tanker safety system, Mr. Meisner, I want to go back to your answer just a couple of questions ago, regarding the terminology “world-class tanker safety system”. That is designed to create public awareness of how a number of programs that are at play come together in a unifying fashion in order to have a tanker safety system, and the establishment of the excellence of those particular components will, in fact, be world-leading.

Is that accurate as to what world-class tanker safety system is and it's not merely a slogan?

Mr. Hoang Mai: Mr. Chair, on a point of order, with respect to Mr. Watson's comment which was a cheap shot at one of our colleagues, he is also the person who actually said we had to talk about issues here since we have witnesses here.

An hon. member: We are.

Mr. Hoang Mai: He is taking a cheap shot, and also mentioning who is here and who is not, which is not very parliamentary, so I am asking—

The Chair: I didn't hear any names mentioned.

An hon. member: He said “opposition critic”.

The Chair: You are right that we are supposed to stick to the topic.

Mr. Hoang Mai: Chair, could Mr. Watson withdraw his comment?

The Chair: She wrote her own book?

Mr. David McGuinty: At least she wrote her own book.

The Chair: Did she?

Mr. Hoang Mai: Could Mr. Watson just withdraw his comments?

The Chair: I didn't know she had written her own book. I don't know what that has to do with today's meeting

Mr. David McGuinty: There are no ghostwriters.

The Chair: Okay.

Mr. Watson.

Mr. Jeff Watson: Mr. Meisner, could you answer the question?

Mr. Tim Meisner: To be clear, yes, “world-class tanker safety system” is terminology to describe the regime we're putting in place that would include prevention measures, response measures, and liability and compensation measures, and, to use your term, we would be world-leading in each one of those categories.

Mr. Jeff Watson: That's correct. I appreciate the clarification. It's not simply a slogan.

With respect to oil handling facilities, are they currently under an inspection regime, and by which federal agency or agencies?

Mr. Sylvain Lachance: Currently they are not. Therefore, there is no agency overseeing them, and that's what this bill is meant to do.

Mr. Jeff Watson: Do they also have no requirement for a safety management system?

Mr. Sylvain Lachance: Currently they do not.

Mr. Jeff Watson: For the purposes of the committee that's looking at the transportation of dangerous goods in a separate study —not this particular hearing we're in right now—should this committee consider whether or not oil handling facilities, as part of that network of transportation, should be required to have a safety management system?

Mr. Sylvain Lachance: They will be required to produce plans, keep them up to date, and so on, and there will be a suite of regulations that will be implemented pursuant to the coming into force of the act with regard to oil handling facilities, and SMS might be something that could be considered.

Mr. Jeff Watson: Okay.

Regarding the number of oil handling facilities in the country, the estimate that's being talked about at the table today, or confirmed, is roughly 400, plus or minus. The opening statement, however, related to this particular part of the amendments cast some doubt on whether or not Transport Canada or any other agency knows of the existence of all oil handling facilities in the country.

Is there someone who is tasked or will be tasked with verifying the number and the location of each? Presumably, if we're going to regulate them, we'll need to know.

● (1030)

Mr. Sylvain Lachance: Yes, and to make it clear, the act does request that the oil handling facilities make themselves known so we'll have complete knowledge of the landscape on that.

Mr. Jeff Watson: Switching gears here for a moment, with respect to the air industry, Transport Canada has been conducting studies on the market of commercially available insurance. Is that true?

Mr. Sylvain Lachance: Yes, we have.

Mr. Jeff Watson: What is the status today of commercially available insurance for the purposes this act is addressing? How costly is it to the industry, if that insurance is obtainable?

Mr. Dave Dawson: As I said, in 2001 it was taken off the market, and it came back on the market at a very high rate. Since that time, it has come down, but through our reports we deem it to still be at a rate that doesn't make it feasible for the airlines, combined with their own insurance, to operate.

Mr. Jeff Watson: How much of the domestic industry has such insurance?

The Chair: Mr. Watson, you have 10 seconds left, so I'll let him answer briefly.

Mr. Jeff Watson: How much of the domestic industry has such insurance currently?

Mr. Dave Dawson: The domestic market all have their own insurance.

Mr. Jeff Watson: For the purposes of what the act is attempting to address with aviation, more risk?

Mr. Dave Dawson: We currently have a program in place. Currently, an airline has to have $150 million, and the other players in the air industry have $50 million. Government covers the rest.

The Chair: Thank you. We have to move on.

Mr. Braid, you have five minutes.

Mr. Peter Braid: Monsieur Lachance, I didn't get the opportunity to speak with you earlier. I have a couple of questions remaining with respect to amendments to the Shipping Act.

In your presentation, you indicated and underlined that many of the amendments close a number of existing gaps. That seems to be the purpose of most of the amendments to the Shipping Act, if not all of them.

Could you please highlight the top three amendments in your mind in terms of their importance in addressing and filling existing gaps and perhaps even provide some examples of the sorts of situations they'll help to address, if that's possible?

Mr. Sylvain Lachance: Yes, certainly.

In terms of gaps, the first one of course is the responder immunity. That's an important one given the fact that agents of response organizations and contractors, for example, who would come from the United States to enhance our response regime do not have the immunity that our response organizations here have in Canada. Therefore, they are very reluctant to come and help out. This is a very important one.

The next one is all the measures that we've put in place for oil handling facilities. Right now they are only required to have plans. Now we're asking them to submit plans, to notify us, and to notify the minister before starting operations and if they change operations, and so on. We'll have a way better handle on oil handling facilities.

The third is the administrative monetary regime, whereby we're adding to our tool kit to enforce the regulations that will be put in place vis-à-vis response organizations and vis-à-vis all handling facilities.

Mr. Peter Braid: That's very good. I have a couple of follow-up questions.

With respect to responder immunity, then, is the responder immunity that we're establishing similar to what exists currently in the United States?

Mr. Sylvain Lachance: What we're interested in vis-à-vis that bill is to ensure that we have adequate response capability in Canada and that we have the best response capability we can. We're interested in this side of the border. Our responders do not enjoy the same immunity down in the United States, but again, as I say, what we're interested in is having a very good response capability here in Canada and getting all the resources we can get our hands on.

● (1035)

Mr. Peter Braid: This provides an opportunity to enhance the response by bringing in international teams and expertise.

Mr. Sylvain Lachance: Yes. This is the objective.

Mr. Peter Braid: With respect to the AMPs, I know that administrative monetary penalties exist in other pieces of legislation, federal legislation. To develop these proposed AMPs, did you look at specific models that currently exist?

Mr. Sylvain Lachance: Well, we have experience with AMPs for other parts of the Shipping Act. It has been in force since 2009 so we have developed some experience with the use of those tools. They are very effective. They work very well. We're getting better compliance with the use of AMPs, so we're going to apply the same philosophy, the same way of operating that's in part 8 of the act.

Mr. Peter Braid: Why is the highest AMP $25,000? That seems low to me.

Mr. Sylvain Lachance: That is a very good question. Why is it $25,000? Why is it not $30,000?

It all depends on the infraction budget, but remember that the other measures, such as prosecution or decertification of ROs, for example, are still available to us. We still can go there.

Mr. Peter Braid: You mean prosecution and/or fines. Correct?

Mr. Sylvain Lachance: Yes.

Mr. Peter Braid: Is the limit on the fines fairly high?

Mr. Sylvain Lachance: Yes, it's $25,000.

Mr. Peter Braid: No, I mean on the fines.

Mr. Sylvain Lachance: I'm sorry. On the fines, yes, it's fairly high.

The Chair: I'm going to have to cut you off there, Mr. Braid.

Mr. Sullivan, you have five minutes.

Mr. Mike Sullivan: With regard to hazardous and noxious substances, we know they aren't radioactive substances and they aren't oil, but they do include some forms of oil, refined oil or thinner oil. Am I correct? Would they include diluted bitumen, for example?

Mr. François Marier: Diluted bitumen is a persistent oil, so no.

Mr. Mike Sullivan: Would the diluents count?

Mr. François Marier: The diluent itself, if you are referring to the condensate, would.

Mr. Mike Sullivan: How would you separate that out? If a ship is going through an oil handling facility or a ship contains oil that has a diluent in it, which is it: is it a hazardous and noxious substance or is it an oil?

Mr. François Marier: The determination of what applies when depends on what caused the damage. If the damage is caused by the oil, which is the crude oil, then we know what regime applies to it. We know who's liable for it. If the damage is being caused by the condensate, which could be very different from what the heavy oil does, then we know where to go to get the compensation.

Mr. Mike Sullivan: In an explosion like the one in Lac-Mégantic, would that be the oil or the diluent?

Mr. François Marier: That would be mainly the HNS, what we're putting in place here.

Mr. Mike Sullivan: That would be the HNS, something of that scale.

Has Transport Canada done a risk assessment of the increasing—we assume there is going to be an increasing—amount of this stuff coming through our ports over the coming years with the building of at least one and maybe two fairly large pipelines to the west coast? What has Transport Canada done in terms of analyzing what new risks there might be? That wasn't done with regard to rail traffic. Now we're talking about pipelines. What's the risk that we're about to —

Mr. Tim Meisner: In terms of the risk assessment that has led to what I call our world-class tanker safety system again, we engaged a company to do a pan-Canadian risk assessment of the product that would be carried in support of the panel's recommendations. That particular study has now been expanded to phase two, which includes a risk assessment on HNS and it's a part of the panel's work.

Mr. Mike Sullivan: Are those available to us?

Mr. Tim Meisner: The first one that's completed is. It's publicly available. The second one is not finished yet.

Mr. Mike Sullivan: In terms of the consultation with stakeholders on this bill, did that include provinces and municipalities?

Mr. Tim Meisner: Yes, it did.

● (1040)

Mr. Mike Sullivan: With regard to your answer to the question about the pollution prevention and pollution response officers, if I were Transport Canada, I wouldn't be getting rid of pollution prevention officers, because that sends the wrong signal to the public. You talk about harmonizing their roles. When I was a union representative, harmonizing roles was a euphemism for layoffs. Is there an intent, by harmonizing these roles, to have fewer of them, or will the number of pollution prevention and pollution response officers equal the number of former pollution prevention and pollution response officers?

Mr. Sean Payne: To answer your question, we're actually increasing the number of inspectors that are going to be in the field. Part of the commitment made was from budget 2012 when these complementary measures were first introduced as part of the direct link to the Canada Shipping Act amendments for part 8. We received additional resources for additional inspectors who will be doing the specific role that the pollution prevention officers are doing in the field. The move, as I tried to explain earlier, basically is a move within the act to harmonize the authority. The authorities for the pollution prevention officers right now will be harmonized under the part of the act that refers to marine safety inspectors. It is a harmonization of authority. We're actually increasing the inspectors.

Mr. Mike Sullivan: You're increasing the inspectors, but are you decreasing the number of prevention officers?

Mr. Sean Payne: No.

Mr. Mike Sullivan: The grand total of people will actually go up, but they'll have a bigger....

Mr. Sean Payne: No, actually, the resources are increasing for specifically the program that I administer, the environmental response program, which is responsible for those specific resources in the regions.

Mr. Mike Sullivan: Is that for prevention?

Mr. Sean Payne: For prevention, yes.

Mr. Mike Sullivan: Okay. You said “response”, not “prevention”, so I'm kind of—

Mr. Sean Payne: Sorry, it's prevention. I'm talking about prevention.

Just to be clear, the response officer designation is for the coast guard response officer in the field.

Mr. Mike Sullivan: These are the people who go—

The Chair: Just finish up your comment, Mike.

Mr. Mike Sullivan: Okay.

The image I'm getting is there are people who respond to a spill and there are people who go and inspect facilities and make sure we're preventing pollution.

Mr. Sean Payne: That's correct.

Mr. Mike Sullivan: They're being combined into one body.

Mr. Sean Payne: No. The response officers are coast guard officers in the field who have specific authorities, in the event of a spill, with regard to the response. The pollution prevention officers are Transport Canada officers or inspectors in the field who do the liaison with the oil handling facilities, who do the oversight of the oil handling facilities, who look at plans and so forth.

Mr. Mike Sullivan: Right, and there's more of those—

The Chair: Thank you very much.

The last four minutes will go to Ms. Young.

Ms. Wai Young: Thank you very much.

In fact my question is specifically about this, because I don't think it was very clear for my colleague as to how exactly you're harmonizing it. That was the word that was used earlier.

Just to be very clear on this, in budget 2012 the government put more resources towards this. I understand there are currently 315 inspectors or people in this category and that you'll get an additional 50 new inspectors.

How is this being harmonized, given that things seem to be the same but you're getting increased resources? Is it that currently those two different functions have been working in silos and not communicating with each other, one being with coast guard and one with Transport? How will this make the system better?

Mr. Sean Payne: Perhaps providing a little historical reference might make this a little clearer.

The environmental response program was one of three programs transferred in 2003 from the Canadian Coast Guard to Transport Canada, when the coast guard became a special operating agency. The programs that were specifically transferred over were programs that had a regulatory mandate.

Some of the responsibilities, specifically those for the environmental response program, were split. The response authorities and responsibilities were retained by the coast guard, which is why we have pollution response officers. At that time, prior to 2003, we had pollution prevention officers as well who did the prevention work, as opposed to the ships' officers in the field, who are out there in the event of a response.

In terms of the pollution prevention officer, in some ways that specific designation is somewhat of a legacy issue of that particular point in time. In an effort to harmonize it, it has also been linked to what we're doing with our administrative monetary penalties. We have marine safety inspectors. We also have pollution prevention officers. The authorities are simply being harmonized under the marine safety inspection authorities portion of the act.

It is very much an administrative move internal to the act in order to make it a cleaner process for us for our training. For our inspectors in the field, it gives them certain authorities that the marine safety inspectors had as well.

As my colleague Monsieur Lachance said earlier, we have marine safety inspectors, but we also have these dedicated resources as well, which are the pollution prevention officers. They all have the designation.

● (1045)

Ms. Wai Young: Would you say, then, that the increased resources in the additional 50 inspectors will do the job that's required?

Mr. Sean Payne: Yes, at this point in time, I think we're confident that the additional resources will certainly help us. We did mention earlier that certain provisions in the act now will compel oil handling facilities to actually identify, which is something we didn't have in the past, but we're confident that these additional resources will be put to good use.

Ms. Wai Young: Previously, we had ascertained there were roughly 400 oil facilities in Canada. How many HNS facilities are there across Canada?

Mr. Tim Meisner: We don't know at this stage. That would be part of the process once the legislation comes in, to get them to report the HNS, and we'll have a better tracking of it at the time of the—

Ms. Wai Young: Currently do we have no system in place to ascertain where these facilities are?

Mr. Tim Meisner: To be clear, there's no regime in place now either, so there's no need to have a tracking of these from a marine shipping point of view.

Ms. Wai Young: Right.

Thank you very much.

The Chair: I'm going to have to end it there.

Mr. McGuinty, on a point of order, very briefly.

Mr. David McGuinty: Mr. Chair, following up on Mr. Payne's answer, I wonder if he might be able to produce for the benefit of our committee any analysis Transport Canada has on the sufficiency of the number of staff that he was alluding to earlier.

I want to follow up on the fact that two months ago we asked for a series of documents from Transport Canada and we haven't seen them yet. I know the clerk has a carry-forward list; I certainly do, and I'm sure you do, Mr. Chair.

Can we have any update on where we are on that, and can we get Mr. Payne to deliver any analysis he has?

The Chair: Okay, maybe we could have that update for the next meeting and if you could get the appropriate documents—

Mr. Sean Payne: Certainly, if it pleases the committee, we'll look at what we can provide for the next one.

The Chair: Okay, thank you.

I want to thank our witnesses for being here today.

Mr. Chisholm and Mr. Mai brought up a point of order on Mr. Watson's comment. We all know that in the House of Commons it's not appropriate to point out a member's absence or presence, but it does happen from time to time. It's much different at committee, and one of the reasons is it's noted in the minutes of the meeting. It will be noted that Ms. Chow is not here.

Opposition members take shots at the government and other members on the other side, and vice versa. It happens all the time. I would suggest you adjust your sensitivity button a little. It happens.

With that, the meeting is adjourned.