



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 013 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, February 25, 2014

—
Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

Tuesday, February 25, 2014

•(0845)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I call this meeting to order.

I'd like to thank our guests. In the room we have with us Captain Stephen Brown; Mr. Duncan Wilson; and by video conference, Ms. Anne Legars.

We're going to start with you, Ms. Legars, for 10 minutes, please.

Ms. Anne Legars (Vice-President, Shipping Federation of Canada): Mr. Chair, and committee members, thank you for having invited the Shipping Federation of Canada to testify before you this morning about part 4 of Bill C-3, the safeguarding Canada's seas and skies act.

The federation, incorporated by an Act of Parliament in 1903, is the representative in Canada of the owners, operators, and agents of ocean ships trading at ports across Canada from the Atlantic to the St. Lawrence and the Great Lakes to the west coast. The ships operated by our members carry Canada's imports and exports throughout the world. These ships are part of the world ocean fleet that sails around the clock, 365 days a year, from one country to another to deliver world trade.

These fleets are governed by a web of international conventions that cover the ship, its building and equipment, manning requirements, and operations, etc. These conventions are incorporated into Canadian law through the provisions and regulations flowing from the Canada Shipping Act, 2001. This world ocean fleet is also governed by a set of liability conventions. These liability conventions are incorporated into Canadian law through the Marine Liabilities Act, which will be amended by part 4 of Bill C-3, which we are here today to support.

These amendments to the Marine Liabilities Act do not come as a surprise to us as they are a step in a long process that started many years ago with the 1996 HNS convention, which did not gain much traction due to a number of implementation issues. Canada subsequently stepped in and provided leadership in the development of a protocol that solved these issues. The upgraded 2010 HNS convention therefore benefits from Canada's input.

The federation, along with industry and other stakeholders, has participated in the government's consultation and Canada's ratification of this upgraded 2010 HNS convention, and has expressed strong support for such ratification. We are not alone in that respect. The 2010 HNS convention has been targeted by the Comité Maritime International, which is the international association of

maritime law national associations, and various international industry associations, as one of the priority conventions for worldwide ratification.

We support this international liability regime introduced by part 4 of Bill C-3 because we believe it is the most efficient way to offer efficient liability coverage for ship-source chemical spills. We believe so because for mobile assets that trade across the world on a continual basis, as ocean ships do, an international regime avoids the high transactional costs that would be attached to a fragmentation of national liability regimes, each of which would have its own rules, liability limits, paperwork, and so on. For us, the first element of an efficient regime is that it is an international regime.

Maybe of more interest to your side, the international regime contained in the 2010 HNS convention pools the risk and its financing among a large number of players, which minimizes the marginal cost of covering the risk for each of them. The international regime grants access to an international fund funded by HNS receivers at a higher limit of indemnification than shipowners alone could provide. Also, this regime is modelled on the ship-source oil pollution liability regime that has been in place and is functioning well.

For all these reasons, we respectfully submit to this committee that Parliament should pass the amendments to the Marine Liabilities Act that are contained in part 4 of Bill C-3, and it's why our organization sent a letter on January 23 to this committee to support the passing of this part of the bill.

Thank you.

•(0850)

The Chair: Thank you very much.

We'll now move to Mr. Brown for 10 minutes.

Captain Stephen Brown (President, Chamber of Shipping of British Columbia): Mr. Chairman and honourable committee members, good morning.

Formed in 1923, the Chamber of Shipping of British Columbia represents the full spectrum of international and domestic shipping-related interests in western Canada, including but not limited to international and domestic shipowners, BC Ferries, vessel agency companies, cargo interests, terminal interests, cruise lines, port authorities, pilotage, maritime lawyers, classification societies, marine surveyors, and marine support and service companies. In all, we have about 180 members representing around 80% of all commercial traffic doing business in the ports of British Columbia.

The importance of credible and robust accident preparedness and response capability is fundamental to all forms of transportation. Whether in aviation, road, rail, or the marine sector, we cannot deliver zero risk, but there is always the capability to manage and mitigate that risk.

In the marine sector, we use every tool at our disposal to do so, including the strict enforcement of International Maritime Organization and national regulations and values related to marine safety and the protection of the marine environment in all its forms; pre-vetting of tanker condition and history prior to entering Canadian waters; and Canada's participation in two highly effective port state control regimes, the Tokyo memorandum of understanding and the Paris memorandum of understanding, under which each country undertakes to target and inspect a minimum of 20% of vessels calling at that country's ports. In so doing, Canada enforces the highest standards of compliance, irrespective of a vessel's nationality or the port of registration.

Also included among the tools we use are the compulsory carriage of electronic precision navigation and detection equipment and the compulsory pilotage of vessels by highly trained Canadian mariners having in-depth knowledge and experience of this country's coastal waters and supervised by four federally regulated pilotage authorities. On the west coast of Canada, the Pacific Pilotage Authority administers the largest single compulsory pilotage district in the world. There is also the universal adoption of double-hull construction for tankers and the extensive use of highly effective tugboats to escort vessels in and out of harbour and otherwise as required.

The Chamber of Shipping of British Columbia is supportive of Bill C-3 for many reasons, including but not limited to the regulated adoption of the incident command system by the Canadian Coast Guard, the extension of pollution prevention and response to include oil handling facilities, the removal of legal barriers to cross-border responders, the commitment to expansion of Canada's national aerial surveillance system, the commitment to expand the number of designated ports for traffic control measures, the commitment to expand scientific research on non-conventional petroleum products, and the adoption of electronic navigation capabilities to further enhance Canada's existing system of navigational aids to mariners.

In combination with the 45 recommendations of the tanker safety expert panel contained in *A Review of Canada's Ship-Source Oil Spill Preparedness and Response Regime*, which was submitted to the minister in November 2013 and published in December 2013, we believe that Bill C-3 is a milestone in progressing the government's objective of implementing a world-class regime of marine safety and preparedness.

We have already submitted our comments to the panel's report. These essentially focus on areas of cross-border reciprocity within Canada's inland waters; marine salvage and firefighting preparedness; a future role for the regional advisory boards; and future governance and reporting, including an annual submission to Parliament on the status of Canada's oil spill preparedness and response in the marine environment.

On the west coast of Canada, through the Western Canada Marine Response Corporation, we have spill preparedness and response

capability far in excess of that currently mandated by Transport Canada. Even so, the west coast marine sector has been actively supportive of a review and upgrading of capability, in recognition of the fact that exceeding legislated compliance is not enough if the legislation itself is open to question. We have therefore long recognized that social licence to proceed with marine-related projects in the natural resource sector is dependent, at least in part, on public confidence in the level of risk mitigation and our state of preparedness in the event of an incident of any nature.

● (0855)

The 2010 report of the Commissioner of the Environment and Sustainable Development into the state of the Canadian Coast Guard's preparedness for a pollution event in the marine environment speaks for itself. We are obviously very pleased to acknowledge the efforts under way to address the deficiencies detailed in the report, but this also underlines the dangers of sustained budget cuts over many years to an organization with such an essential role to play in spill preparedness and response.

Similarly, the 2012 report by the Commissioner of the Environment and Sustainable Development into Atlantic offshore oil and gas activities revealed further specific areas requiring attention.

In conclusion, Mr. Chairman, I thank you for this opportunity to appear before the committee. I look forward to taking any questions you may have related to our views on this important piece of legislation.

The Chair: Thanks very much, Mr. Brown.

Mr. Wilson, I'll turn it over to you for 10 minutes.

Mr. Duncan Wilson (Vice-President, Corporate Social Responsibility, Port Metro Vancouver): Thank you.

Mr. Chair, honourable committee members, Port Metro Vancouver very much appreciates the opportunity to present to the committee today on the importance of Bill C-3 and our perspective on it. As members may already be aware, Port Metro Vancouver is Canada's largest and most diverse port, serving as a strategic gateway that is essential to fulfilling Canada's trade objectives. It's also a significant economic force strengthening the Canadian economy. We are the most diversified port in North America, facilitating trade with over 160 trading economies and exceeding 130 million tonnes of cargo annually.

As the fourth-largest tonnage port in North America, we offer 28 major marine cargo terminals served by three Class 1 railroads, providing a full range of facilities and services to the international shipping community. To put that in perspective, approximately \$0.5 billion a day in goods moves through Port Metro Vancouver, which represents approximately 20% of all of Canada's trade in goods.

The port is also a cornerstone economic driver for British Columbia's economy, with one in twelve people in the region earning their living as a direct result of port-related activities. That amounts to about 80,000 jobs. These numbers only include jobs that are directly related to the supply chain. Clearly there are scores of other jobs in export and import industries, from forest workers to potash miners and from grain farmers to shopkeepers and small businesses right here in Ottawa.

At Port Metro Vancouver the creation and maintenance of the safest possible operating environment is a guiding principle for our organization. We are acutely aware of our responsibility for safeguarding the west coast's natural heritage. We take great pride in our 50-year track record of service as Canada's Pacific bulk oil gateway without experiencing a single navigational issue with an oil tanker.

With global demand for oil and liquid natural gas growing, we believe leveraging our ability to safely and responsibly transport these products will give us an advantage as we build our business in the sector and generate increased economic benefit to the communities in which we operate.

With that in mind, Port Metro Vancouver enthusiastically supports the proposed legislative changes contemplated in Bill C-3. Specifically, we welcome the changes to the Marine Liabilities Act, which will implement in Canada the liability schemes identified by the international conventions on civil liability for oil pollution damage, on civil liability for bunker oil pollution damage, and on the establishment of an international fund for compensation for oil pollution damage.

Taken in combination, this not only ensures Canadian alignment with international best practice but also provides appropriate compensation, up to \$730 million, for victims of any damage or environmental contamination caused by oil.

Additionally, we fully support the amendments to the Canada Shipping Act contained in Bill C-3, which build on the current requirements for pollution prevention and response at facilities that handle oil.

We also support increasing Transport Canada's ability to oversee the marine operation and enforce regulation by providing marine safety inspectors with the tools they need to ensure compliance, the introduction of new offences for contravention of the act and increased penalties relating to pollution, and the removal of legal barriers that would hinder spill response by preventing Canadian organizations from participation in cleanup efforts.

Further to supporting these legislative steps, Port Metro Vancouver would additionally recommend that the government take steps to implement recommendations made by the tanker safety panel in their report on Canada's ship-source oil spill preparedness and response regime.

Recognizing the complexity of this task, Port Metro Vancouver commends the tanker safety panel on its thorough report. In particular, we want to acknowledge the panel's incorporation of a number of Port Metro Vancouver's recommendations that were outlined in our submission of June 2013. These include a risk-based geographic-specific assessment to determine responder capacity,

adequate resourcing and training of Canadian Coast Guard personnel, and the establishment of a fund for research and development of oil spill preparedness through collaboration between industry and government.

In addition, we recently provided additional comments to Transport Canada on the tanker safety panel report that we feel will further strengthen the regime.

First, we believe the government should prioritize the establishment and operation of the Canadian Coast Guard incident command system, making that agency the lead in incident response and reporting. This can be supported by Transport Canada and Environment Canada resources.

Port Metro Vancouver would also strongly support the enhancement of shore-based radar for vessel traffic services operated by the Canadian Coast Guard's marine communications and traffic services branch. These additional resources would address coverage gaps along the main tanker routes into Vancouver as well as elsewhere on the coast, increasing safety in areas where there is tanker traffic.

● (0900)

We would further recommend that the government move to require all tankers entering Canadian waters to make arrangements with salvage providers that would include services such as marine firefighting, similar to salvage requirements that are delineated in the United States Oil Pollution Act of 1990.

Finally, I would like to outline an initiative that would complement the intentions of Bill C-3. We would encourage the Government of Canada to support the establishment of a centre of excellence for the safe marine transportation of oil and LNG commodities in Canada. A centre of excellence would act as a leading independent source of information on best practices for shipping oil and LNG, while promoting and facilitating research and regulatory frameworks that deliver the highest standards of safe and sustainable shipment.

We believe Canada would greatly benefit from an institution operating for the purpose of identifying and coordinating research and development of oil and LNG shipment technologies, promoting industry best practices, and encouraging open dialogue with stakeholder communities. A centre of excellence would also come to serve as a trusted source of information, education, and awareness for safe handling techniques for oil and LNG storage, marine transportation, spill prevention, preparedness, and operational response. It would additionally provide a structured framework for evolving research and the scientific monitoring of environmental and social effects related to the shipment of oil and LNG commodities.

In conclusion, let me once again reiterate Port Metro Vancouver's support for Bill C-3 and its contents. We believe this legislation to be a concrete first step in the solidification of a world-class operating environment. We will always be supportive of initiatives that build safety and security into our operations, and in that context we would encourage the committee to support the passage of this bill.

Thank you for your time today. I'm happy to take any questions.

The Chair: Thank you very much.

We'll now go to questioning.

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 participating and for making their presentations.

Ms. Legars, we have asked some questions about company liability. If the bill is passed, ship owners' or shipping companies' liability will be limited to \$230 million, I think. Can you tell us in concrete terms whether companies already have insurance to protect themselves in case of hazardous spills?

[English]

Ms. Anne Legars: Currently all the shipowners are covered by insurance, but for the HNS there is no... Basically when you have no specific regime, the fallback regime is the one integrated under part 3 of the Marine Liability Act, and your liability is capped depending on your tonnage, and depending on the type of liability.

The limits are much lower than the ones under the HNS convention, and you don't have access to reform. The fallback liability regime is the one under part 3 of the Marine Liability Act, which incorporates another convention on the civil liability of ships. So it's a kind of general provision that applies if you don't have another specific convention applying. When you have crude oil or bunker oil, you have other conventions, other regimes that kick in with higher limits, and there is access to the international fund.

Now with the HNS convention, another specific regime would apply and would set higher limits, which, if my memory serves me right, are \$185 million for the shipowner's liability when the spill is from packaged HNS and \$160 million when it's from HNS carried in bulk. On top of that, you have access to the international fund that allows the claimant to basically be covered up to \$400 million.

● (0905)

Mr. Hoang Mai: Are you saying right now that a shipowner's insurance liability is less than the maximum \$185 million or \$160 million, as you mentioned, or is it higher?

One of the concerns, or the question that I have, is how that impacts shipowners right now. Will some of them not be able to pay for the extra liability insurance or is that not a concern?

Ms. Anne Legars: No, that's not an issue, because first of all, the risk is very low, so you know you can be insured for that specific risk. Of course incrementally you have to pay more, but because it's something that is marginal, it doesn't double your insurance costs. It's a kind of marginal increase of your insurance cost, especially when it's something that is under an international convention, because the whole fleet, internationally, is covered, and under this convention the risk is also shared with the receivers of HNS.

Mr. Hoang Mai: Thank you very much.

To Captain Stephen Brown, in part 5 the amendments to the Canada Shipping Act deal with oil handling facilities. Are you satisfied with the safety measures that are included in the bill?

Capt Stephen Brown: Yes. I think the extension of the regime to include oil handling facilities was a very logical step to be taken.

One of the questions we have regularly been asked is what happens in the event of an incident in a marine facility that eventually finishes up with an impact on the marine environment, and where might the responsibility lie?

I think for the facilities themselves, number one is to be required to have a response plan and be certified in the same way that a response organization like eastern Canada marine response or Western Canada Marine Response is certified, to have individual oil handling facilities certified by Transport Canada.

That's not to say that they haven't previously had arrangements in place, but now it's essentially formalizing that certification. It also clarifies the fact that if there is an incident, you don't need a ship to be involved for one of the response organizations to implement a response.

Mr. Hoang Mai: Thank you very much.

Mr. Wilson, how comfortable are you with the exchange of information you have with the shipowners in order for you to respond to some of the problems you may have or the accidents that may occur?

Mr. Duncan Wilson: I think we have every reason to be proud of the high standards we have in place. Captain Brown was referring earlier to some of the tanker transit procedures we have in place on the west coast. Of course all ships are double-hulled. We require all loaded tankers leaving the port to have two pilots on board rather than one. We require them to transit during slack water, in daylight, at high tide, and typically with tethered tugs attached to the vessel to steer it safely to dock should there be an issue. We've never had a navigational issue with a tanker.

I think the other thing that's important to note is that the terminals, when they are making decisions about which vessels will call at the terminal, are very, very careful about who they're contracting with. Well in advance of a ship arriving in our port, plenty of information is available about that vessel, so we're quite confident on the safety

• (0910)

Mr. Hoang Mai: I don't think I have much time, and I have one more quick question.

The Chair: It will have to be very quick.

Mr. Hoang Mai: Yes.

Are you concerned about the fact that we're limiting the responsibilities for either shipowners or in the...including the fund? There's a limit; I forget how much.

A voice: [*Inaudible—Editor*]

Mr. Hoang Mai: Combined, yes.

Mr. Duncan Wilson: I think this is part of the solution. The tanker safety panel's report also made some recommendations in this regard. One of the things they recommended was taking the cap off the ship-source oil pollution fund.

I mean, if you look at the cost of a major spill, clearly it's very difficult to insure against that amount of money. We support the polluter pay principle, but there does need to be that backstop of government being prepared to step in, in a crisis.

The Chair: Thank you very much.

Mr. McGuinty, seven minutes.

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

I'd like to hone in, Captain Brown, on part of your written brief. I'll recite the following from page 3:

On the west coast of Canada, through Western Canada Marine Response Corporation we have spill preparedness and response capability far in excess of that currently mandated by Transport Canada. Even so, the west coast marine sector has been actively supportive of a review and upgrading of capability in recognition that exceeding legislated compliance is not enough if the legislation itself is open to question.

Are you questioning the legislation?

Capt Stephen Brown: The legislation that I'm questioning is the existing legislation, which is to say that you're required to have 10,000 tonnes of response preparedness and response capability under the Canada Shipping Act today.

The response organizations are required to have that level of response capability under that legislation, as it exists today, and that's

the legislation that Captain Houston's panel is referring to in its recommendations.

On the west coast of Canada, we currently have 28,000 tonnes of response capability based in the Western Canada Marine Response headquarters, and scattered up and down the west coast. What we have found in public consultations is that with tankers considerably more than 10,000 tonnes, even up to 300,000 tonnes—in the event should the Northern Gateway be approved—the public perception is that there is not enough response capability.

Certainly, in the marine sector, we agree with those questions that are being asked. When I make that comment, it's in the context of 10,000 tonnes of response capability, and you're going to be bringing in much larger tankers than 10,000 tonnes; therefore, in order to generate the social licence that you need, you need to clearly demonstrate that you have an adequate level of response capability.

Mr. David McGuinty: Translate that into simple English for me. Is it sufficient or insufficient now?

Capt Stephen Brown: In our view, on the west coast, it's insufficient and more is needed.

Mr. David McGuinty: It's not Bill C-3 that's going to address this, right?

Capt Stephen Brown: No, it's not.

Mr. David McGuinty: You go on to talk about some of the failings, or shortcomings, pointed out by the Commissioner of the Environment and Sustainable Development. You also underlined the “dangers of sustained budget cuts over many years to an organization with such an essential role to play in spill preparedness and response”. Why don't you explain that to Canadians in terms of your concerns with the Canadian Coast Guard?

Capt Stephen Brown: In the view of the international marine industry, the Canadian Coast Guard has been underfunded for a number of years. That manifests itself in a number of ways. They're really highlighted in the report that you reference and that I referred to in my comments. I think many of the problems that were highlighted in the 2010 report do stem from many years of budget cuts to the Canadian Coast Guard.

One example—and we're getting off topic a little bit—is our leading icebreaker, the *Louis St-Laurent*, which is more than 40 years old and won't be replaced for at least another eight years. It's those sort of budget cuts that the marine industry is very cognizant of, and with the improvements in funding that have taken place in the last two to three years, we would like to see that sustained, going forward, to ensure that the Coast Guard's mandate can be fully fulfilled.

The recommendations of the tanker safety expert panel refer, on a number of occasions, to the importance of adequate funding for Transport Canada, the Canadian Coast Guard, and Environment Canada in order to fulfill their mandate.

• (0915)

Mr. David McGuinty: It's pretty hard for us to trumpet to the world that we pursue responsible resource development if we don't see the concomitant, necessary investments in the coast guard.

Mr. Jeff Watson (Essex, CPC): I've been patiently listening to the member opposite and I have yet to hear a question on Bill C-3, which is the substance before the committee right now. I would appreciate, Chair, if there might be some instruction to members to actually ask questions on it.

The Chair: Mr. McGuinty, you know the rules. You may continue.

Mr. David McGuinty: Mr. Chair, then you probably should have asked Mr. Wilson and Captain Brown not to bring the testimony they brought today. Every single question I've raised today is directly related to the testimony given this morning. Where's the problem?

Mr. Watson may not like the questions, but they are completely drawn from...In fact, I've been very diligent and disciplined in raising the material put forward by the witnesses, and quoting back to them word for word, verbatim.

Where's the problem, Mr. Chair? I need your guidance here because this is not the first time we've had Conservative members challenge questions. I just need to know, where is the line?

The Chair: The questions are to pertain to Bill C-3, which we're studying here.

Mr. Jeff Watson: It's the orders of the day.

Mr. David McGuinty: So, the testimony given here today, Mr. Chair—verbatim—you're saying is out of order?

The Chair: I didn't say that and don't put words in my mouth.

Please continue your question on Bill C-3, Mr. McGuinty.

Mr. David McGuinty: Thank you.

If I could, Mr. Wilson, go directly to your testimony to satisfy my colleagues.

Can you give us an idea of...Throughout your testimony, you asserted several times that there have been no accidents of any significance in the port. Is that right?

Mr. Duncan Wilson: There have been no navigational incidents involving a tanker. We have had an oil spill, as you're aware, that was land-based from a pipeline rupture several years ago, in 2005.

Mr. David McGuinty: So of the 6,500 substances covered by the HNS convention, including liquefied natural gas, propane, and refined fuels and other dangerous cargo, you've had not a single incident in the Vancouver port?

Mr. Duncan Wilson: We haven't had an incident with a tanker. I'm actually not aware if we've had.... Typically something like, for example, propane isn't shipped in a large way. It's shipped in small ways, usually in lots. It's probably in containers or other ways. I'm not sure if we've ever had an incident with that. But we've never had an incident with a tanker.

Mr. David McGuinty: In your testimony you skipped over two lines on page 3 of your written testimony: "Should the government choose to proceed" with the establishment of a centre of excellence "such a centre could at least in part be funded through the collection of a fee applied to all oil and LNG cargo moving through West Coast ports."

How would that fee be collected and who would pay for it?

Mr. Duncan Wilson: It depends. In our situation we have the ability to levy a fee as a port authority. So we've had discussions with industry about such a fee and industry is supportive of it. If the fee is going to be collected from multiple ports, obviously multiple ports need to be involved in that conversation or, indeed, if we were to look at it on a more national basis then there's probably a broader conversation that we'll need to have with Canada in terms of how best to collect it.

Mr. David McGuinty: Why do we need a centre of excellence for the safe marine transportation of oil and LNG commodities if what we're hearing from the government today is that we have an excellent system?

Mr. Duncan Wilson: We have an excellent system but one of the opportunities, the legacy opportunity, that these projects provide us is the opportunity to be the best in the world. Last year we led a delegation to Norway to look at Norway's practices, and they are hailed as a global leader. What we found is that actually we have excellent practices here in Canada but why not take this opportunity to do that much more? Currently there isn't one organization that acts as the gathering place for championing best practices and identifying them on a global basis, and we think why shouldn't Canada be a leader in that?

● (0920)

Mr. David McGuinty: How's my time, Mr. Chair?

The Chair: Your time just expired.

Mr. Watson, you have seven minutes.

Mr. Jeff Watson: Thank you, Mr. Chair. Thank you to our witnesses for appearing today, including Madam Legars by video conference this morning. I just want to pick up on where Mr. Mai had been questioning because it's not entirely clear to me.

In the event of an HNS accident or incident, shipowners are only covered by a general liability insurance. Is that what I am to understand, that there is no insurance specific to an HNS incident?

Ms. Anne Legars: That question is for me?

Mr. Jeff Watson: Yes.

Ms. Anne Legars: Yes, that's the case.

Mr. Jeff Watson: What is the general amount of coverage? Does it vary ship by ship? There's no standard general liability or is there a standard general liability? What is that amount?

Ms. Anne Legars: It will be on a ship-by-ship basis. Each ship will have its own insurance and it will cover up to the limits of liability of the convention on civil liability for ships, which is currently incorporated via part 3 of the Marine Liability Act, because in shipping matters the liability of a ship is always capped at some point. You have different caps depending on the type of liability. So for the carriage of passengers it's incorporated in the provisions of another convention, the Athens convention. For crude oil, that's another one. For oil as a fuel, it's another one. For general liability that's the one that is incorporated in part 3 of the Marine Liability Act. Because the liability is capped to that level the ships that don't have another level of liability, because, for example, they are not tankers and don't carry oil as cargo, will not have additional insurance. Now because Canada has ratified the convention on oil carried on ships as fuel, the Bunker convention, it means that all ships basically have bunker on board so they all have this limit of liability for pollution by bunker as well, which is higher than the general liability. This is for pollution by bunker.

Mr. Jeff Watson: If we have an LNG accident, what is the amount of liability currently, without C-3?

Ms. Anne Legars: Without C-3 it will depend on the size of the ship because it's on a tonnage basis.

Mr. Jeff Watson: Then what's the range?

Ms. Anne Legars: I would have to go back to it because you have a gradation depending on the size, so it's kind of complicated, but I can send you a table after this hearing. It's lower than the HNS convention.

Mr. Jeff Watson: The committee would appreciate that information.

Ms. Anne Legars: Actually this general liability convention is being upgraded and amendments to the limits will come into force in 2015. It's been amended by a tacit amendment recently, and the upgrade will come into force in 2015, so I can send you upgraded limits in this note as well.

Mr. Jeff Watson: The committee would appreciate that information. Thank you.

I want to hopefully bring some clarity here. There has been a conflation of several issues. I know there has been a lot of comment on the world tanker safety panel report, for example. Our response, with respect to oil, is a separate issue from what we're dealing with here today. We're dealing with C-3 and plugging a gap that exists currently with respect to HNS, hazardous and noxious substances.

I think, Madam Legars, your testimony, even though we don't have the exact numbers, points to the reality that we do need a regime, both for shipowners and shippers, that carries a higher liability. We may find out, yet again, that as a result of the world tanker safety panel report we may be revisiting the level of this, for example, as well. For now, we need to have a regime in place, and that's what the legislation gets to today, making sure that we have a start on that.

Maybe this is for the port to answer. This brings into the liability regime the requirements for oil handling facilities. First of all, we heard by testimony that we don't exactly know how many there are. There is an estimate of about 400. This will now make reporting

requirements that be known to the regulator, that being Transport Canada.

What is the risk of an incident at a loading facility between a tanker and the oil handling facility? Is there a high degree or high likelihood of an incident occurring where there is a spill? What is the liability regime currently for a situation like that, where it occurs at the facility?

● (0925)

Mr. Duncan Wilson: Thank you. I can address the first part of the question. Maybe the second part, in terms of liability, I can ask Captain Brown to address.

In terms of the safety around the loading procedure, at every terminal when you're loading a tanker there are very strict operating protocols. For example, you will have a crew, both on the dock and on the vessel, at the ready to close valves should there be an issue or a leak during that loading procedure. The current practice in the port is that all vessels are boomed during loading, so if there is a spill in the vicinity of the ship, it is contained and easily cleaned up.

In terms of liability, I think I should turn that over to Captain Brown.

Capt Stephen Brown: Again, as Ms. Legars accurately pointed out, there are formulas under which the liability of the vessel—because this is an incident involving a vessel—would be calculated. In a general sense, under the international conventions today, it's about \$1 billion of liability limitation.

On top of that, we have here in Canada very wisely preserved the Canadian ship-source oil pollution fund, which is another \$400 million. The question of course has come about on a frequent basis: what happens if the expense of a cleanup were to exceed that? That issue is addressed in the tanker safety panel's report. I can talk to that, but I'm not sure if that's where you would like me to go.

Mr. Jeff Watson: Well—

The Chair: You're actually out of time.

Mr. Jeff Watson: Okay, very good. Thank you.

The Chair: We'll move to Mr. MacKenzie for seven minutes.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Mr. Chair.

It's actually quite interesting for somebody who's not part of the committee to hear what the panel has provided here today, because I think it is an issue that Canadians as a whole have an interest in. Quite frequently we hear of the problems only after they develop. So I'm pleased to hear some of the comments with respect to how the industry itself looks at how it can mitigate the public's concerns and mitigate the damage caused when an accident does occur.

When I hear what you're talking about and I see what I see, I have a few questions. One of them would be to the port people.

First, in terms of the service requirements of the proponents in the case of an adverse incident, who would be responsible for that kind of an incident? Is it the port authority, the tanker, the coast guard? I'd just like to clear the confusion about who may or may not be responsible for taking care of the issue.

Mr. Duncan Wilson: The incident command is the responsibility of the coast guard. Anyone, upon citing this bill or being aware of this bill, can contact Western Canada Marine Response Corporation and bring them into play to address the spill. In the case of the port itself, if our harbour patrol vessel identifies a spill, we have that ability. But incident command is the coast guard's responsibility.

• (0930)

Mr. Dave MacKenzie: Incident command is under the authority of whom? Who operates that from a control perspective?

Mr. Duncan Wilson: The Canadian Coast Guard does, but the actual cleanup is done by Western Canada Marine Response Corporation.

Mr. Dave MacKenzie: Okay. Can you talk to us about what the relationship is amongst all three? Coming from a background in emergency response, I know sometimes there are issues around who takes what role. Obviously you're telling us that we've never had an incident of this magnitude, or any magnitude, before, so how would that relationship evolve?

Mr. Duncan Wilson: Annually, there are emergency drills and preparedness exercises to test our readiness. I'd say the working relationship between the different agencies is excellent. There is one thing that has been a concern in the past, which I think continues to be an area that needs attention: in the event that someone tasks WCMRC to respond to a spill and there's uncertainty about the origin of that spill, there is some concern about the person who makes that call being liable. So if it's the port, are we liable for that cost?

In theory, the ship-source oil pollution fund is supposed to take care of that, but it's important that we be confident that we can step in and say we need to have a response in place.

Mr. Dave MacKenzie: Fix the problem first, and worry about some of the other...afterwards.

Mr. Duncan Wilson: Yes.

Mr. Dave MacKenzie: Mr. Chair, how much time do I have left?

The Chair: You have almost four minutes.

Mr. Dave MacKenzie: Mr. Braid would like to....

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

I'll ask this one question and ask each of the three of you to chime in with a response, perhaps starting with Madame Legars. Could each of you explain how the Bill C-3 requirement to have oil handling facility operators demonstrate their oil spill preparedness and response capacity would affect your respective organization directly or indirectly?

Ms. Anne Legars: From an international shipowner's perspective, I guess it would have an indirect effect in terms of response in case of a spill at the terminal. But for us it's something that is indirect, and we didn't comment on that in our letter because it's not our direct liability or responsibility.

Mr. Peter Braid: Mr. Wilson.

Mr. Duncan Wilson: I'm not sure I understand the question. Could you maybe repeat the question?

Mr. Peter Braid: Sure.

Bill C-3 has a new requirement ensuring and requiring that oil handling facility operators demonstrate their oil spill preparedness and response capacity. How would that requirement affect your organization directly or indirectly?

Mr. Duncan Wilson: It would affect the terminals in the port. The terminals that are operating in the port would be impacted directly by it and they will have to have plans in place and demonstrate their ability to respond. The port authority itself doesn't operate any terminals so the impact on us directly is somewhat minimal.

Mr. Peter Braid: Captain Brown.

Capt Stephen Brown: As Mr. Wilson mentioned earlier there is a requirement already with the response organizations to have drills. Eastern and western Canada are mandated to have a 1,000-tonne drill every year and a 10,000-tonne drill every three years. Really what you're doing is asking the oil handling facilities to demonstrate what the existing oil responders are already doing.

In terms of the impact on our members we participate in those drills and we would envisage that we would participate equally in the drills that the oil handling facilities would undertake to demonstrate their preparedness as well.

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

• (0935)

The Chair: You have about one minute.

Mr. Peter Braid: Captain Brown, one of the important aspects of Bill C-3 that you strongly support and mention in your testimony is the regulated adoption of the incident command system by the Canadian Coast Guard. Could you elaborate on that?

Capt Stephen Brown: For a number of years the Canadian Coast Guard, for reasons I'm not clear about and I don't think too many of us are clear about, has not been an integral member of the incident command system. It's been outside the incident command. It's been a bit of a satellite organization. We began discussions with the coast guard and government about three years ago about the fact that we felt it was important that it be reviewed as a policy. Indeed, it has been reviewed. The coast guard is now in the process of becoming an integrated part of the incident command system. Oil has recently been recovered from the *Brigadier General M.G. Zalinski*, the ship that sank in the Second World War on our north coast and has been seeping oil recently. The recovery was undertaken by the coast guard under the incident command system. That process is now under way. It required some funding for it to happen. The coast guard has embraced incident command now. We're not sure why that hadn't been the case previously.

Mr. Peter Braid: Thank you.

The Chair: Thank you very much.

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

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

Thank you to the witnesses for making what is a pretty dense and difficult bill a little easier to understand.

Captain Brown, regarding the notion of cuts to the Canadian Coast Guard and to the public perception that there's not enough response, can you comment on the closure of the Kitsilano station and how that might affect response?

The Chair: You have a point of order, Mr. Watson?

Mr. Jeff Watson: Again, we're not on Bill C-3. While I understand this is a topic of some interest to members around the table, if we were having a study around response there would be considerably more latitude. We are addressing the bill and the requirements of the bill with respect to regime and whether the requirements of this bill are sufficient regarding a regime. They don't relate to the coast guard's operation or its facilities or anything else like that, Mr. Chair.

The Chair: We're on Bill C-3, Mr. Sullivan.

Mr. Mike Sullivan: I'm going to ask the question again.

The Kitsilano coast guard station closed last February. It is part of the world-class safety regime that is part of the discussion of this bill. The coast guard station, having closed, in the public perception perhaps makes the port of Vancouver less safe. It is part of, as you've referred in your testimony, "The danger of sustained budget cuts over many years to an organization with such an essential role to play in spill preparedness and response".

In this bill I thought we were talking about trying to make ports safer. Correct me if I'm wrong, Mr. Watson.

Mr. Jeff Watson: I will correct you because you are absolutely wrong.

Mr. Mike Sullivan: Well, then, we're not trying to make ports safer. We're trying to make them less safe.

Mr. Jeff Watson: This is related to liability regimes and a whole lot of other things—

The Chair: Mr. Sullivan has the floor.

Mr. Jeff Watson: Fair enough.

The Chair: Your question, Mr. Sullivan?

Mr. Jeff Watson: On the bill?

Mr. Mike Sullivan: Are the closure of the Kitsilano coast guard station and the cuts to the Canadian Coast Guard a difficulty in creating a world-class tanker safety regime?

Captain Brown?

Mr. Jeff Watson: On a point of order, Mr. Chair—

The Chair: Point of order.

Mr. Jeff Watson: —maybe the member can point to where the Kitsilano station is in the bill.

Chair, I don't know.... It's flouting your own decision at the table. I'm not going to tell you how to do your job, but I'm going to raise the point of order again and ask you to rule on it.

The Chair: It's definitely not on Bill C-3. I'll see if Mr. Brown is prepared to comment on it if he wishes, but....

Capt Stephen Brown: I'm happy to do so, Mr. Chairman, should you wish.

First of all, Kitsilano base is not actually within the port's jurisdiction. It's outside of the port's jurisdiction. There was a misperception that in some way the Kitsilano base was related to spill response preparedness and capability. That is actually not the case. It was a pure rescue boat that was stationed at Kitsilano. It had nothing to do with oil spill response and preparedness. It was not equipped to undertake those tasks. The issue is really one of whether there was adequate other mitigating rescue capability when that boat was removed. I can talk about that as well, but I think I've answered the question.

● (0940)

Mr. Mike Sullivan: In terms of another part of your brief, Captain Brown, you talk about Bill C-3 including a commitment to expand Canada's national aerial surveillance program, the commitment to expand the number of designated ports for traffic control measures, the commitment to expand scientific research on non-conventional petroleum products, and the adoption of electronic navigation capabilities. Those aren't part of this bill, are they, as far as I can read it?

Capt Stephen Brown: No.

Mr. Mike Sullivan: They're a government commitment.

Capt Stephen Brown: They are, yes.

Mr. Mike Sullivan: Under what aegis will those be created? How will that happen?

Capt Stephen Brown: Well, I think you can say that they're under the government's commitment to develop. As Mr. Wilson described it, we have an excellent record of capability in managing the marine traffic on the coasts of Canada.

What we want to do for what is sometimes referred to as a world-class system is to raise the bar even higher than the one we have today. I think referenced to the fact that we went to Norway to look at what they are doing and we've also looked very, very carefully at other jurisdictions.... There is within the marine industry a determination to leave no stone unturned in looking to see what we could possibly do better than we're already doing. But let there be no doubt: what we are already doing is of a higher standard by world classification.

Mr. Mike Sullivan: Will these commitments...have you heard yet whether the government has actually put them in a budget? Is there funding for these commitments?

Capt Stephen Brown: They are recommendations from the committee at this stage, sir. The government has undertaken, in my understanding.... I stand to be corrected here, but in my understanding these recommendations are now moving forward, and there is a possibility that they could appear in legislation in the near future. But I can't speak for the government on that, except for the fact that they are undertakings that have been made, and certainly the marine industry would support them should they be fulfilled.

Mr. Mike Sullivan: So the government has actually made those undertakings?

Capt Stephen Brown: Yes.

Mr. Mike Sullivan: This is the Department of Transport or Transport Canada?

Capt Stephen Brown: Yes, it's Transport Canada. For example, on the expansion of the national aerial surveillance system, which you referenced, it was announced last year that this was the intention. In fact, the minister announced last week that in fact that is going ahead, and the budget for national aerial surveillance has been doubled.

The Chair: Thank you.

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

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

Thank you to our guests for being here today. It has been very enlightening.

I want to come back quickly to the liability limit issue because I think there is some confusion on this, and I want to make sure that I have a clear understanding of it. In my understanding, it's the hazardous and noxious substances that are covered under this \$185 million or, including the international fund, \$400 million, which covers about 6,500 substances under the 2010 HNS protocol. In my understanding, that does not cover oil.

On the \$400 million, we heard testimony a few weeks ago from the department that, to the best of their knowledge, there's never been an incident anywhere in the world that has cost even probably half that in cleanup, so the liability of \$400 million seems to be a very reasonable level at this point in time.

I was wondering if each of you, or you, Ms. Legars, could speak specifically about that liability limit and, to your knowledge—and if anybody else has knowledge—about having incidents that would be even in excess of \$200 million on the cleanup of any of these 6,500 substances covered under the HNS protocol.

Ms. Anne Legars: No, I don't have any knowledge of such a big spill that would have happened. So what we know is that this limit hasn't been reached and is far from having been reached yet.

Mr. Lawrence Toet: So the \$400 million is actually quite adequate, in your opinion.

• (0945)

Ms. Anne Legars: Yes, and also, remember that if over time, say 10 years from now, the international community, including all the signatory states, believe that this limit should be upgraded, there are provisions in the conventions to do that quickly.

Mr. Lawrence Toet: Correct. That's my understanding also.

Captain Brown, would you want to add to that, or you, Mr. Wilson?

Capt Stephen Brown: I think Ms. Legars is absolutely right. I'm not aware of anybody breaking those liability limitations.

I met with the tanker safety expert panel yesterday afternoon in Vancouver, and not to dwell on that too much, but as you may know in phase two of their research and mandate they are now working on the HNS convention. We spoke at length about a number of issues related to how we would respond and how we would pay for the

HNS convention. One of the long discussions that we had, for example, when it comes to HNS, is that a lot of those substances today are carried on container ships and there have been incidents. I think last year there were three major incidents involving container ships carrying HNS. So when you're looking at the costs involved in an HNS incident, it's a very complex regime in the sense that it can take place in the middle of a stack of containers on a very large container ship, and so in terms of who pays, how they pay, responsibility levels, declaration of cargoes, it's a very complex web of responsibility. But, as Ms. Legars said, when it comes to the actual limitation in terms of a cleanup, I don't think we've reached that level.

Mr. Lawrence Toet: Yes, and just for clarification, once you've worked your way through the web, the liability coverage is still adequate.

Capt Stephen Brown: It is.

Mr. Lawrence Toet: Mr. Wilson, I was just wondering if you could expand on one comment that you made in your opening statements. You mentioned removing legal barriers that would hinder spill response by preventing Canadian organizations from participating in cleanup efforts. Could you speak to that for a minute, how this bill is addressing that particular concern?

Mr. Duncan Wilson: There are a number of things that in the past potentially inhibited that. From a liability point of view, for example, U.S. responders weren't necessarily indemnified if they came into Canada, and I know that has been an issue. Also if you're not central to, if you're not part of the organization, if you're not WCMRC and you're responding, you need to have some security that you will be protected. But to my knowledge, the biggest gap was the cross-border issue and I don't know if Captain Brown has a comment.

Capt Stephen Brown: Yes, that was the crux of the issue, in the sense that in our part of the world, on the west coast, Canadian responders, if they went to the assistance of the United States authorities, had responder immunity and we were not providing that responder immunity of this side of the border. So one of the recommendations we made to the panel is that this be fixed. It also extends to some degree to the issue of, if dispersants are used or alternative response techniques as referred to in the tanker safety panel report, what level of liability might accrue from that.

The Chair: Time has expired. We'll move to Mr. Mai, for five minutes.

[Translation]

Mr. Hoang Mai: Thank you, Mr. Chair.

[English]

I would like to come back to the cap for liability.

Captain Stephen Brown, you went into that and then Mr. Watson's time was up. Can you tell us about what happens? I know that in practice we haven't exceeded the amount of liability or cap that happens.

If I understand correctly, according to the legislative summary of Bill C-3 there's a cap of \$230 million for the HNS liability for shipowners, and then after that the HNS fund kicks in, which is about \$500 million. Then, if it exceeds that, what happens? Who has to pay for that? Can you explain to us?

Capt Stephen Brown: I'm not sure from reading the bill what the intention is. However, a parallel mechanism has been recommended by the tanker safety panel in the event of an incident involving an oil spill, whereby the Canadian consolidated revenue fund would actually be used to support the ship-source oil pollution fund.

So if we are going to be consistent, the logical way perhaps might be to go in the same direction of using the consolidated, but then, there has to be a user pay, and there has to be government recovery of any amount of money expended in support of the cleanup and the recovery.

• (0950)

Mr. Hoang Mai: How would the government get back...? We understand that if it exceeds that amount...

Just for clarification, Mr. Watson, it was November 5, 2013, legislative summary on Bill C-3. I'm referring to page 4, 1.4.2.2, just for your information.

You're saying that the government will pay for it and then we'll recover that amount. How?

Capt Stephen Brown: I don't want to speak for the government because this specific point is not covered in the bill in terms of the excess—

Mr. Hoang Mai: What happens, then?

Capt Stephen Brown: The parallel, as I mentioned, is what is proposed with the ship-source oil pollution fund, borrowing money in excess of \$1.4 billion of liability for cleanup from the Canadian consolidated revenue fund.

The recovery of that money in the case of an incident involving oil would be a levy on oil imports and exports, and the recommendation is quite clear on that point. In terms of recovery, potentially, if the government were to decide to go in this direction on other substances, it would be a similar mechanism to recoup any expenditure, and it could be a levy on those substances in terms of their transportation through Canadian ports. There are many options open, actually.

Mr. Hoang Mai: From where I stand, there is nothing in Bill C-3 that talks about...There is no talk about levy, and that's why you're saying we need to have a conversation about it—

Capt Stephen Brown: Unless I missed it, I don't think it's specifically addressed.

Mr. Hoang Mai: Exactly.

Capt Stephen Brown: I stand to be corrected.

Mr. Hoang Mai: From what we understood when we spoke to Transport Canada, I think right now our concern is that if we exceed that cap—and I understand that in practice it never happened—but if we exceed that cap of maybe \$230 million plus \$500 million, let's say \$730 million, Canadian taxpayers will have to pay, and we won't be able to go back to the shipowners or to the people who are involved because there is a legal cap. They are capped to \$230 million maximum.

Madame Legars, you mentioned \$185 million and \$160 million. Can you correct me if I'm wrong in terms of saying that the shipowners are capped? If we were to exceed the amount that the HNS fund kicks in afterwards, would Canadian taxpayers have to

pay for the cleanup, unless there is something in practice that you can tell me? Is there a levy that would be comparable to what happens with the oil fund?

Ms. Anne Legars: Under the conventions, yes, a shipowner's liability is capped. Then you have this international fund that is capped as well, so, if you don't have enough money, what do you do? Well, it's not in the convention; it is for each country to decide what they will do. One solution is, if you don't have enough money in the pot to pay for all the claimants, each claimant gets paid on a pro rata basis. So that's one solution. The other solution is that the state decides to kick in and put some kind of mechanism in place. It's for each state to make their own policy decision on that.

From a shipowner's perspective, what we want is that, once our liability has been defined under the convention, it's like a building block. You keep it and you can put things around it, but you don't touch the building block. After that the ship liability and the need of levels of insurance and all of that is governed strictly by the convention. So if after that the Canadian government, for example, wants to build something else around that block, they can do that, of course.

What was mentioned on the oil regime with a tanker panel—because the recommendation that Captain Brown just mentioned was around the oil spill regime—was that if there is not enough money at the international level with \$1.4 billion, the Canadian fund will still advance money based on some money that would be given by the government. It's an advance. The government would basically be a banker providing money to the Canadian fund so that the Canadian fund indemnifies.

After that, there is a provision under the act where the government already has the ability to raise money on the oil terminals and can reactivate this levy. This levy was in place for a number of years when the regime was established, and then they had lots of money and they didn't need more at the Canadian level of fund, so they stopped collecting this levy, but this levy could still be reactivated or maybe reactivated at another level. You could index and CPI it or whatever and start collecting from the oil handling facilities on a post-event basis to replenish this money with interest to the government. So that's one of the things that was put as a recommendation in the tanker panel report.

Actually we said that we were okay with this recommendation as far as it doesn't touch our liability and it doesn't touch the convention, because the convention is a block. You can build things around it if you don't touch the convention. This is true for oil because we are talking about the oil spill regime here that is already in place and has been running for many years, and so on and so forth.

But actually this regime is slightly different because you have more substances and it's more complicated because they can be in a package form or they can be in containers, as explained by Captain Brown. But still the underlying concept and model is the same one, that you have the shipowner's liability first capped at a certain level, and then you have access to a fund that is funded by the receivers of the product. So that's the same concept; it's just a little bit more complicated because you have many types of products and many ways of carrying them.

• (0955)

The Chair: Thank you.

Mr. Komarnicki.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for appearing before us.

I'm going to focus somewhat on the responder side of things. I know in questioning from Mr. Toet you talked about responder immunity. I gather this bill is a significant improvement in that area mostly because, if a responder is to take part, they want to be sure that their liability is covered. Is that liability limited to just civil liability or is it civil and criminal liability? Is it significantly robust to cover all possible types of incidents relating to responder responsibility?

Capt Stephen Brown: My understanding is the intention is for all liability.

Mr. Ed Komarnicki: So that means whatever it may be. And of course the idea behind that is to encourage participation on short notice?

Capt Stephen Brown: Yes. In the event of a major incident, it's to encourage full participation by whoever has the resources to participate and can add to the response, without fear of liability.

Mr. Ed Komarnicki: I know that the use of the tug and the pilotage program we'd discussed previously certainly go a long way to ensuring safety.

But things like collisions could take place, or storms, or fire on vessels, which would mean that the response organization would be important in those events. Of course when you're looking at what the weak link in the whole system might be, it's the fact that, as was mentioned earlier, there are about 400 oil handling facility operators and each of those would have to satisfy or demonstrate that they have an oil spill preparedness and response capacity.

How does this bill address the issue of there being so many of them and give you a level of confidence that each with its individual capacities and capabilities can meet the specific requirements? Both of you can answer that.

Capt Stephen Brown: I'll begin.

It does in the same way that we have hundreds of different terminals in Canada that are certified for security. Transport Canada has undertaken to inspect them and satisfy themselves that the security plans of those terminals satisfy what's under the international regime and also what's in the Canada Shipping Act.

For Transport Canada to embark upon certification of oil handling facilities is quite a large task. Of course it is. Each terminal will be required to submit its own proposal. The proposals won't all be the same, because each terminal is a little different. Transport Canada will have to satisfy themselves that whatever is proposed is not only practical but verifiable. I also think they will be asking the terminals to demonstrate the capability that's in their plans.

• (1000)

Mr. Ed Komarnicki: Do you wish to comment, Mr. Wilson?

Mr. Duncan Wilson: No, I'd just echo what Captain Brown said.

The only thing I'd say is that I only have line of sight in terms of the facilities actually in our jurisdiction. Those facilities, as we talked about earlier, have contracts in place or they fund the response organization that is there to support them. So we're quite confident that it's a robust program and there are adequate measures in place. Obviously there's always more that can be done.

Mr. Ed Komarnicki: The number of facilities involved of course somewhat complicates the matter, I would expect. But the other aspect of it would be if there are expansions in any of the facilities or changes in capacity or personnel, how are those monitored to ensure that there is an ongoing capacity to respond appropriately, and does this legislation address that?

Mr. Duncan Wilson: I'm not sure specifically what in the legislation addresses that, but I do know for a fact that WCMRC is expanding its capacity in response to the increase in volumes that we're already seeing.

Capt Stephen Brown: I think that also in the event of a major expansion of a terminal, then obviously a response plan will have to be resubmitted and reapproved. You won't be able to write on the back of an earlier plan.

Mr. Ed Komarnicki: Is there any kind of risk analysis, maybe in terms of percentages or whatever, to say the risk might be greater in bringing a vessel into port or in the loading or unloading? Is there any degree of risk change between those two types of handling?

Capt Stephen Brown: I'll put my seafarer's hat on here and say no. In our view, provided we continue to mitigate risks involved in the movement of oil, whether it's actually on the seaway or for vessels alongside, as long as Canada continues to apply the level of risk mitigation that we're applying today and seeks to enhance it even further, we don't see anything for the general public to be concerned about.

The Chair: Thank you.

Mr. Watson, you have five minutes.

Mr. Jeff Watson: Thank you, Chair.

To return to the issue of responder immunity, obviously if there's a question of potential liability, emergency response is affected negatively either because of delays or because of a decision by agents of certified response organizations. They may not respond at all, is an issue you raised earlier, Captain Brown, relative to whether U.S. agents would respond if requested by a Canadian certified response organization.

Capt Stephen Brown: I think it would be a stretch to say that they wouldn't respond. I'm sure they would respond. But the level to which they would respond and the care they would feel they would have to take might be impacted. I think the feeling from the marine industry is to not have that as a barrier, to let them partake as a full member of a response regime and not respond, perhaps, with one arm behind their backs.

Mr. Jeff Watson: The status as a certified response organization is currently a designation that is given by the Minister of Transport. Once you have that designation you have the liability that's needed. The ability to extend that to say that if a certified response organization is looking to others to join them in a response effort.... They don't have the extension of that same civil or criminal liability, and to get it at this point, technically they'd need a designation from the minister, which is a cumbersome process.

Is that a fair understanding of how it works?

Capt Stephen Brown: That's correct.

Mr. Jeff Watson: So amendments in Bill C-3 will automatically extend the same liability that certified response organizations have to other agents that they would be calling in to help them.

Is that a fair assessment?

• (1005)

Capt Stephen Brown: That is correct.

Mr. Jeff Watson: And that's important.

Capt Stephen Brown: It is.

Mr. Jeff Watson: If you remove questions about liability, you get quicker response. Is that fair enough?

Capt Stephen Brown: It was a technicality originally under the Canada Shipping Act, and it is being addressed and remedied under this act.

Mr. Jeff Watson: The other remedy here is with respect to oil handling facilities when unloading or loading a vessel. Is that correct? That's being addressed by Bill C-3 as well.

Capt Stephen Brown: Yes, it's an integral part of Bill C-3, the extension of certification to the oil handling facilities.

Mr. Jeff Watson: The specific amendment now is that it's not just a vessel, but "from a vessel or an oil handling facility", and that will address that particular issue.

Regarding administrative monetary penalties, if there is a minor infraction, currently the only way to fine is that you'd actually have to prosecute. What we're seeking to do now is apply a regime of administrative monetary penalties that would allow us a range of capabilities, short of prosecution, to ensure that there's proper accountability for being response-ready on a variety of levels.

Is that a necessary step forward in terms of the accountability of the system?

Capt Stephen Brown: Well administrative monetary penalties have become a mainstay of legislation enforcement here in Canada across all agencies, so we were not surprised that for the sake of consistency, Bill C-3 is a continuation of same.

Mr. Jeff Watson: I don't have any further questions.

The Chair: Mr. Sullivan, for five minutes.

Mr. Mike Sullivan: Thank you, Mr. Chair.

I want to come back to the notion of the limits on liability that are a part of Bill C-3. Essentially it raises the limit of liability, but anything that goes above that limit would fall to other players, principally the government. The Lac-Mégantic debacle has shown us what happens when somebody doesn't have enough insurance; it's

governments that pick up the cost. The tanker safety panel has actually not finished its report on hazardous and noxious substances, so we seem to be putting the cart before the horse in a way. We're amending the act before we have the tanker safety panel's recommendations.

But they have made recommendations on ship-source oil pollution. Without getting into oil—I know Mr. Watson will be offended if I talk about oil, because it's not really here—I want to talk about the concept they've put forward that polluters should pay, that taxpayers should never be on the hook for exposure to oil spills on our coasts, or to hazardous and noxious substances on our coasts. So recommendation 23 in their report suggests that if the government were to bankroll the additional...but then go back after the fund—whether it's the hazardous and noxious substance fund or the ship-source oil pollution fund, it doesn't really matter. The government would bankroll anything over and above the current limits or the limits as being proposed in the act, and that would then fall upon itself to back over the funds. But we would require some legislative change to this act to do that.

Are you suggesting or would you agree that we should amend this bill to provide that taxpayers won't be on the hook for exceedances of what the limits of liability are in these funds? I invite all three of you to respond.

Perhaps Ms. Legars first, because you're so far away.

Ms. Anne Legars: I would say that, from our standpoint, Canada is overdue to be able to ratify the HNS convention and implement it because it's the first building block of the system.

I might be afraid that this would be pushed back. Waiting to have a whole regime after the tanker panel finishes and it goes into all kinds of consultations again and so on and so forth, it might be years from now before we have these next amendments. So I would say let's grab this low-hanging fruit now, which is to put in place the HNS convention in Canada and build from that. Then it would be in place already, and you could build other things. I believe that sooner is better.

• (1010)

Mr. Mike Sullivan: Captain Brown.

Capt Stephen Brown: I think that is correct, given the extreme doubt that the limitation of liability would be exceeded. At this point, I'd be dissuaded from trying to address what is being addressed by the tanker safety panel in terms of spill response. The likelihood of an HNS incident escalating to the level of a major oil spill is extremely remote.

I think Ms. Legars hit an important point there. One thing we also have to focus on is getting the international HNS convention ratified as soon as possible and then working with our partners at the international level to address exactly the point that you're raising.

Mr. Mike Sullivan: Mr. Wilson, did you have any comment?

Mr. Duncan Wilson: I'd echo Captain Brown and Ms. Legars; I think that it's an important step and I don't see it as putting the cart before the horse in the case of this bill. I think these are progressive steps that we need to take towards an ideal regime.

The member had asked a question about whether taxpayers or government should be the backstop, basically. It seems to me that the critical thing is that action needs to be taken in the event of an incident and until such a time as we've got a perfect regime, and I'm not sure such a thing exists, I think it's very important for government to be prepared to step in if it needs to, and yes, absolutely, go after the polluters to recover those costs.

The Chair: Thank you.

Mr. McGuinty, five minutes.

Mr. David McGuinty: Thank you, Mr. Chair.

Mr. Chair, I want to quote the testimony at our last meeting from one of the government officials, Mr. Marier, who is with us here today in the audience. I just want to remind members of the quote:

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.

So if any members, Mr. Chair, have any concerns talking about oil under Bill C-3, they should perhaps read the testimony and understand that it includes variations on oil and oil in terms of its application to loss of life and personal injury claims.

May I ask all three witnesses a general question? Maybe they could respond for 30 seconds each, starting with Ms. Legars.

What's not in Bill C-3 that should be here?

Ms. Anne Legars: From our perspective everything is here. Maybe in a couple of years Canada will want to move further, but for the time being, everything is here.

Mr. David McGuinty: Your members in the Shipping Federation believe that this bill is not capable of being improved in any way?

Ms. Anne Legars: What we have a direct interest in is strictly part 4, the one on the implementation of the HNS convention. For the other parts we have only an indirect interest; we are not experts on that. Basically our submission is that part 4 move forward and that it become part of Canadian law, and we are fine with that at this stage.

Mr. David McGuinty: So we're moving to implement HNS standards in anticipation of the HNS agreement actually becoming ratified and becoming international law, right?

Ms. Anne Legars: Yes.

Mr. David McGuinty: Thank you.

Captain Brown, how is Bill C-3 capable of being improved? What can be added to Bill C-3 so we can do right and better by Canadians?

Capt Stephen Brown: I think Bill C-3 as it stands is good.

I had a long discussion yesterday with the HNS panel, Captain Houston's panel, and it focused very much on a couple of concerns. One was that, as I mentioned earlier, a lot of the substances are carried on container vessels and we need to ensure we have the

capability to deal with an incident in a Canadian port, should one occur.

The second part of that is ensuring that we, as Canada, set a leading example for providing ports of refuge for vessels that might be involved in this type of an incident.

Mr. David McGuinty: Mr. Wilson.

Mr. Duncan Wilson: As I said earlier, it's a process of continuous improvement. I think the bill, in its current form, is worthy of support. When the panel finalizes its report on HNS, there may indeed be other things that the government would wish to take a look at in terms of implementing the legislation. To get all the benefits from the liability regime and the other benefits we've talked about this morning, I don't think there should be any delay. I think the bill is in good shape.

•(1015)

Mr. David McGuinty: Captain Brown, can I go back to your earlier testimony? You singled out three instances of spill or accident. What were those?

Capt Stephen Brown: I don't think I did. Three incidents?

Mr. Duncan Wilson: You were talking about three incidents of container....

Capt Stephen Brown: I'm sorry, on the container side, yes.

There were three container vessels in 2013 that were involved in incidents which, it is assumed, involved hazardous and noxious substances. One was a container vessel in the mid-Atlantic which had a major explosion under deck and it was assumed that that was a result of some instability of a substance.

There was a vessel leaving a port in Asia that, while she was actually leaving the port, had to be attended because of a similar incident there, there was an explosion from a container.

Third, there was a small chemical tanker that suffered a similar incident in 2013.

They were the three incidents that come to my mind immediately that serve to, perhaps, underline that we talk a lot about tankers, but many of these substances are carried in containers. Everything is declared. We have to ensure the accuracy of those declarations, I would say.

As I mentioned earlier, also, it's very important that we, here in Canada, prepare ourselves to deal with those types of incidents, should we ever be confronted with them.

Mr. David McGuinty: What would you describe as the riskiest substance regulated?

Capt Stephen Brown: I don't have an opinion on that. I'm not a chemist, I'm a mariner, but there are a few nasty substances out there that are carried in containers today. It's well controlled and well documented, but I wouldn't care to pass an opinion.

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

Mr. Watson.

Mr. Jeff Watson: Thank you, Chair.

The requirements for an HNS regime have been the substance of consultations with various stakeholder groups and Bill C-3, therefore, captures the substance of those consultations. Is that fair enough to say?

Capt Stephen Brown: Correct.

Mr. Jeff Watson: I see some heads nodding at the table.

Madam Legars.

Ms. Anne Legars: Yes, actually you know you have different levels of HNS and the liability regime is really the tail of the dog. Marine safety comes first. You want to avoid accidents and incidents, all of that.

Number two is preparedness and response. There is a lot of work that is being done, currently, about developing a preparedness and response regime for HNS, so that's another pillar of a regime.

Bill C-3 addresses the third pillar which is the liability one. There were many consultations under liability things, but there is also consultation, currently, under preparedness and response regime.

Mr. Jeff Watson: Right. I guess the thrust of the question is that the elements of Bill C-3 have the foundation of consultation with stakeholders already.

Ms. Anne Legars: Yes.

Mr. Jeff Watson: If I'm understanding the witnesses today, you're asking the committee, in its consideration of Bill C-3, not to necessarily anticipate or try to prejudge the outcome of consultations around the HNS dialogue that's occurring with the world tanker safety panel. Structural changes to Bill C-3 right now, in anticipation of that, would not be the source of consultation.

Is that a fair assessment, and that structural changes to this bill should be the substance of consultation?

Capt Stephen Brown: I would agree.

Mr. Jeff Watson: Mr. Wilson.

Mr. Duncan Wilson: Agreed.

Mr. Jeff Watson: Madam Legars.

Ms. Anne Legars: Yes.

Mr. Jeff Watson: Thank you.

The Chair: Thank you very much.

I'd like to thank all of our witnesses for being with us and thanks very much for your contributions to our study.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>