THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HÉDARD J. ROBICHAUD, *Acting Chairman*

No. 1

THURSDAY, MARCH 11th, 1971

Complete Proceedings on Bill C-186,

intituled:

"An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

REPORT OF THE COMMITTEE

(For list of witnesses and briefs submitted—see Minutes of Proceedings)

23614—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Nichol
Blois	O'Leary
Bourget	Pearson
Burchill	Petten
Connolly (*Halifax-North*)	Rattenbury
Denis	Robichaud
*Flynn	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Haig	Welch
Hayden	Macdonald (*Cape Breton*)
Hollett	*Martin
Isnor	McElman
Kinley	McGrand
Kinnear	Michaud
Langlois	Molson

Ex officio members: Flynn and Martin

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, March 4th, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Urquhart, for the second reading of the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada"

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Urquhart, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, March 11th, 1971.

(1)

Pursuant to notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m. to consider the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

Present: The Honourable Senators Robichaud, (*Acting Chairman*) Burchill, Denis, Hollett, Kinnear, Langlois, Michaud, Pearson, Smith and Sparrow. (10)

Present but not of the Committee: The Honourable Senators Aird, Benidickson, Cook and Grosart. (4)

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Smith, the Honourable Senator Robichaud was elected Acting Chairman.

It was *Resolved* on Motion to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

CANADIAN NATIONAL RAILWAYS AND AIR CANADA:

Mr. R. T. Vaughan, Q.C., Vice-President and Secretary of the Company.

Mr. G. M. Cooper, General Counsel

It was resolved to print as appendices to these Minutes as Exhibit "A" document intituled: "Statement by CN Witness to the Senate Committee on Transport and Communications, etc", and as Exhibit "B" document intituled: "Canadian National Railways Financing and Guarantee Acts".

After discussion and upon Motion of the Honourable Senator Burchill, it was Resolved to report the said Bill without amendment.

At 11:30 a.m. the Committee adjourned for consideration of another Bill.

ATTEST:

Aline Pritchard
Clerk of the Committee

Reports of the Committee

Thursday, March 11th, 1971.

The Standing Senate Committee on Transport and Communications to which was referred the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada", has in obedience to the order of reference of March 4th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,
H. J. Robichaud
Acting Chairman

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The Standing Senate Committee on Transport and Communications

Evidence

Thursday, March 11, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-186, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada.

Senator Hédard Robichaud, (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have before us for consideration this morning Bill C-186. Before proceeding I would, in your name, welcome the new clerk of the committee, and also entertain motions for the regular publication of documents.

Senator Smith: Mr. Chairman, I think it would be quite appropriate to point out that Mrs. Pritchard, the clerk of this committee, has been on the Senate staff in other responsible capacities for some years. I think it is worthy of note that she is the first lady clerk of a committee in the Senate, although the precedent was established some years ago in the House of Commons.

Mrs. A. Pritchard (Clerk of the Committee): Thank you very much.

The Acting Chairman: I must say that I have known Mrs. Pritchard for a number of years, because I was privileged to have her services as my secretary.

Bill C-186, concerns the capital expenditures for the Canadian National Railway System and Air Canada.

We have with us this morning, Mr. R.T. Vaughan, Q.C., Vice-President and Secretary of Air Canada and also Vice-President and Secretary of the Canadian National Railways. We have Mr. G.M. Cooper, General Solicitor for the C.N.R. and Mr. S.D.H. Thomas, Assistant Comptroller of Budgets and Statistics. We also have Mr. W.G. Cleevely, Co-ordinator of Capital Budgets. I believe it is customary for the representative of the Canadian National Railways to make a statement before we proceed with questions from honourable senators regarding the bill. Mr. Vaughan, we would welcome a statement from you.

Mr. R.T. Vaughan, Q.C., Vice-President and Secretary, Canadian National Railways: Thank you, Mr. Chairman, good morning, senators.

Senator Benidickson: Before Mr. Vaughan speaks, may I just say that when this bill went before the Committee on Transport and Communications of the House of Commons, the only witness was the minister. Am I correct in that?

Mr. Vaughan: We were not present. Could I explain that for a moment? The procedure in the past has been that the companies appear before the appropriate committee of the House of Commons in dealing with their annual reports and budgets following the approval of the budgets by order in council. Flowing from that procedure is the draft of this piece of legislation, which is then introduced in the other place and which you, yourself, many times have piloted through the house. It has never been referred to a Commons committee before. The tradition was when it went through the House of Commons that it came to the Senate and the Senate dealt with it in its own procedural fashion, and then referred it to this committee. The tradition over the years has been for us to come to this committee rather than appearing twice over there. That is the reason for that procedure.

With the subsequent change of parliamentary procedure rules where every legislative bill has to be referred to a committee of the Commons unless there is otherwise unanimous consent over an emergency piece of legislation, every bill goes to a committee. On this occasion we were not asked to appear before the Commons Committee, the reason being that in a week or two we were going to be there dealing with our annual report. Similarly, Air Canada is going to be there dealing with its annual report for 1970.

Senator Benidickson: This is pursuant to a commitment the minister gave to the committee of the other house when he was the sole witness.

Mr. Vaughan: That is correct.

Senator Benidickson: And he said that there was some urgency about passing this bill because of your own financing and the necessity to pay certain bills that relate to expenditures in 1970, and as the bill relates to expenditures between January 1, 1971 and June 30, 1971. Therefore, he made a commitment in view of the urgency that the normal questions about operations of the Crown companies or the financing of those Crown companies could be reviewed by parliamentarians from the other place.

The Acting Chairman: Senator Benidickson, I do not like to interrupt, but would it not be preferable first to have a statement from Mr. Vaughan then you would be entirely free to bring this matter up.

Senator Benidickson: With all respect, Mr. Chairman, I think all members of the committee should be aware of the fact that we are doing something today that is opposite to past practice.

The Acting Chairman: I think it has always been the practice, honourable senators, to have representatives of the CNR and Air Canada before this committee when similar bills have been before this committee in the past.

Senator Smith: Without exception, in my experience, it goes back a few years.

Mr. Vaughan: What I was trying to explain, Senator Benidickson, is that when you piloted the bill in the Commons, the CNR used to go to the Commons committee and go

through their questioning period in connection with its annual report.

Senator Benidickson: Subsequent to that you brought forward a bill similar to the one before us today.

Mr. Vaughan: Which never went to a Commons committee. It came to this house and this committee. We may get into this later on, and I can elaborate on that.

I am grateful to appear before you once again. I would like to introduce Mr. James Smith, Assistant Treasurer of Air Canada, who is familiar with the capital budget of Air Canada. I would also like to thank you, senators, for your courtesy in postponing our appearance from yesterday to today out of respect and deference to the death of Mr. Gordon McGregor, the former President of Air Canada, who served his country and his company very well over two decades. Mr. McGregor, I should say—and I know you will agree—was an outstanding and dedicated Canadian, and a perfectionist in his own right. I would like to pay this tribute to him on behalf of both companies.

Senator Benidickson: Having been a member of a committee over practically all of the period of time during which Mr. McGregor appeared, I would just like to thank Mr. Vaughan for making those remarks. I endorse them wholeheartedly. Mr. McGregor was always one we could understand, and one who was very sympathetic to parliamentary investigations.

Mr. Vaughan: Thank you, senator. I am really in your hands as to your procedure. In former years we have passed out a memorandum which explains the bill clause by clause. This seems to be a satisfactory procedure in the past and I have asked the general solicitor to take you through that rather quickly. Also, I passed out in advance another memorandum which I know you have not had time to read. This refers really to my exchange with Senator Grosart last year. When we come to that memorandum perhaps Senator Grosart will wish us to explain it and my difficulty in endeavouring to deal with it. If it is your wish we will proceed with the explanations of the bill. Is that satisfactory?

Hon. Senators: Agreed.

Mr. Vaughan: I would like to introduce Mr. Cooper, the general solicitor of CNR. He will deal with Bill C-186 clause by clause.

Mr. G.M. Cooper, General Solicitor, Canadian National Railways: Thank you, Mr. Chairman and honourable senators. As you well know, this bill deals with a number of financial matters related to Canadian National Railways and to Air Canada with respect to the calendar year 1970 and the first half of 1971. Its provisions follow very closely the form and principles of the corresponding 1969 act. The order in which they appear in the bill are as follows: Parliamentary authority in respect of capital expenditures and capital commitments by CN during 1970 and the first six months of 1971 . . .

Senator Grosart: The reason I asked it was that you used the word "parliamentary", which is not used in the brief.

Mr. Vaughan: We more or less assumed that any brief has to do with Parliament, otherwise we would not be here, I guess.

Senator Grosart: We have been told on several occasions that there is an authority by order in council.

Mr. Cooper: That is correct, senator.

Mr. Vaughan: Pursuant to certain statutes.

Senator Grosart: That is why I raised the point, that the verbal description was "parliamentary". That is very important, that we have that recognition, that it is parliamentary authority and not an order in council that we are talking about.

Mr. Cooper: I could read this document but I think it would take a little longer and it is always rather tiresome to the people listening to have exactly the same words as appear on the page. The other purposes are: Provisions related to the sources of the money to meet those expenditures, and then there is a section providing for Government loans to Air Canada andor Government guarantees . . .

Senator Grosart: Excuse me. Mr. Chairman, may I suggest that we have the questioning section by section, rather than waiting and going back?

The Acting Chairman: I agree, if honourable senators prefer to question section by section.

Mr. Cooper: May I say, senator, that on the first page of the memorandum there is a capsule of the bill, and then as I turn the pages I come to the particular sections in the order in which they are set out in the bill.

Senator Grosart: I am interested in the capsule.

Mr. Cooper: Shall I continue with the capsule?

Senator Grosart: If you would indicate when you are through with your explanation of a section . . .

Mr. Cooper: Certainly.

Senator Grosart: I suggest Mr. Chairman, it would be simpler to do it that way, rather than go back afterwards.

The Acting Chairman: You can proceed, Mr. Cooper, and then there will be questions from Senator Grosart.

Mr. Cooper: The third general purpose of the bill is provision for certain financing of Air Canada's capital requirements. Fourthly, there is provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National, in the case of one section, and Air Canada, in the case of the companion section.

I think I might say that is the capsule. The next thing would be to say that the first section is section 1, and go on.

Senator Grosart: Mr. Cooper, may I ask you a question? There is a difference in the wording of items (ii), (iii) and (iv) on page 1.

Mr. Cooper: Yes, sir.

Senator Grosart: First, you say that the purpose of the bill is to obtain authority, and you said "parliamentary authority", in respect to capital expenditures and capital commitments during 1970 and during the first six months of 1971.

Mr. Cooper: Yes.

Senator Grosart: Then you say "provisions". Why do you use the word "authority" in one case and "provisions" in the other?

Mr. Cooper: I suppose the long title of the bill is "an act to authorize the provision of money", but some of the sources of money, such as depreciation accruals, would accrue without the provision. There is no requirement for authority to accrue depreciation accruals, for example, but there are provisions respecting the use of those accruals.

Senator Grosart: May I ask, then, is no authority required for (ii), (iii), and (iv)? Is no parliamentary authority required?

Mr. Cooper: Oh, certainly, it is. For instance, with respect to the purchase by the Minister of Finance of preferred stock, which is a source of funds, parliamentary authority is required and it is provided for in this act. Again, to the limited extent that the CN budget contemplates borrowings, which is solely with respect to branch lines, borrowings from the minister or guarantees by the Government of those borrowings, parliamentary authority is required. So that certainly some parliamentary authority is required.

Senator Grosart: Would this cover (ii), (iii) and (iv) or, to put it in another way . . .

Mr. Cooper: I think the answer is yes.

Senator Grosart: . . . or could you tell us if there is anything in the bill before us that does not require parliament authority?

Mr. Cooper: Yes, we do not require additional parliamentary authority in respect to the capital expenditures. The parliamentary authority in respect to the capital expenditures exists on a permanent basis in the CNR Act. The administrative control is order in council and the authority is complete when the order in council is passed.

Senator Grosart: What is the authority for the order in council?

Mr. Cooper: Section 37 of the CNR Act.

Senator Grosart: What act?

Mr. Vaughan: The Canadian National Railways Act.

Senator Cook: If you look at the memorandum . . .

Mr. Vaughan: If you are going to get on this point, Senator Grosart, we should turn to the second memorandum.

Senator Cook: There was some misunderstanding, I think, on the question of the order in council authority to approve of the budget. Many senators felt that this was the authority for the budget. This bill is to make provision for the moneys. The authority for the capital budget is set out on page 3 of Mr. Vaughan's memorandum under the heading of "capital expenditures". It says:

> Statutory authority and control respecting capital expenditures by Canadian National is to be found in section 37 of the Canadian National Railways Act, chapter 29 of the Statutes of 1955. Under that section Canadian National must submit annual estimates of its requirements for capital expenditures, etc. Approval of the budget, in which these estimates are contained, by the Governor in Council . . . provides full authority for the company to implement its capital program.

So the company can go ahead without the authority under the act, but then of course this act provides the money. There is no conflict between the authority given by the Governor in Council and this act. They are just two steps.

Senator Grosart: Very respectfully, I would suggest that there is a conflict. You have authority to spend money, but you have not got the money. Surely there is a conflict?

Mr. Vaughan: I am not sure I follow that.

Senator Grosart: I understand this paragraph as saying there is authority to implement this capital program, that is, to spend the money. Am I correct in that?

Mr. Vaughan: That is correct.

Senator Grosart: So you can spend the money before the provision of the money has been authorized.

Mr. Vaughan: I think that . . .

Senator Grosart: Mr. Chairman, that I have to point this out. I am trying to find out what we are asked to do here, as a committee of Parliament. It has been pointed out that up to now the committee in the other place has not examined this. We had the statement this morning that our witnesses rely on this committee. This is the first time I have heard of this, and I am not questioning it. It indicates to met that in this committee and in this Senate we have been derelict in our duty if we are the only committee of Parliament which examines this bill in this way.

The Acting Chairman: At the moment.

Senator Grosart: If this has been going on for some years, I suggest to you, Mr. Chairman, that we should be very clear as to exactly what our responsibilities are as a committee. This is why I am asking these questions.

Senator Cook: Being the sponsor of the bill, may I intervene to say that the greatest bulk of the capital expenditure is found by CNR from its own resources. There are two means. There is the provision of the preferred stock, there are certain borrowings for branch lines, and there are possible deficits. If the CNR went ahead and if these moneys were borrowed on the approval of the Governor in Council and if Parliament did not vote these extra sums, the preferred stock and the borrowings, then the CNR would be in a deficit position as far as the taxpayer is concerned and Parliament would overrule the Governor in Council, which it would have no right to do.

Senator Grosart: Mr. Chairman, with due respect, I am very grateful for the answers given, but I would like to have on the record those answers from our witnesses. These are questions that to my knowledge have not been answered anywhere. As far as I have been able to find out, there are no answers to the questions I am asking anywhere on the record.

Senator Langlois: Mr. Chairman, I think we are wasting a lot of valuable time this morning. If Senator Grosart wants to have the explanation that he is seeking, he should let the witnesses make the statements they have prepared for us. They are quite explicit, and I am sure that he will get all the information he wants if he would only let the witnesses state their case. I suggest, Mr. Chairman, that we should adopt this procedure, otherwise we are wasting time. As was pointed out by Senator Cook, the second statement is quite clear and explains everything that Senator Grosart is asking. If he would be good enough to let the witnesses state their case, he would get what he wants.

The Acting Chairman: I understand that Mr. Vaughan is ready to answer Senator Grosart's question.

Senator Grosart: Before that, Mr. Chairman, may I reply to the outburst from Senator Langlois to make it clear that I have not refused to let anybody do anything. I am not a member of the committee. I have not the authority to structure the procedure, which is in your hands, and I resent the suggestion that I am preventing anybody from doing anything.

Senator Langlois: I made no such charge.

Senator Benidickson: Or wasting time.

Senator Grosart: The procedure is in your hands.

The Acting Chairman: We will hear from Mr. Vaughan.

Mr. Vaughan: Mr. Chairman, I recognize Senator Grosart's questions. We had some similar conservations about this last year, and those are in the evidence of last year's meeting.

What we have tried to do here is meet some of those questions. The only thing I can do today is endeavour to tell it the way it is. If Senator Grosart, or any other senator, wants to quarrel with the method and procedure of the way it is, and the way it has been handled, then such senators have ample opportunity to do that. I tried to explain the procedures to both houses of Parliament to avoid the company's appearing twice, or three or four times. This has been the system that has been worked out by successive administrations over the past 30 or 40 years.

As I said last year, anything is capable of improvement; anything is capable of simplification. It all depends on what is desired.

Senator Cook gave the explanation of this bill in the Senate, and, as I read it, it was a clear explanation of what is provided by this statute.

Now, in respect of the timing, we have no control over that, as you recognize. We come here in aid of the bill in order to help explain it. I am sure you would respect my wishes not to be drawn into questions that are beyond my jurisdictional competence to answer. I would ask you sincerely not to get me involved in a political debate on whether the way it has been done is right or wrong, but it has been done in that way for many years.

This bill, as Senator Grosart and other senators as well as members of the Commons have pointed out, has its timing somewhat out of sequence. As Senator Benidickson knows it was in the spring of the year that the bill used to be dealt with in the Commons, immediately following our appearance before the Commons committee. Then the bill would come here and, having appeared before the Commons committee we would then come here to go through the same procedure. However, in the past few years, through other administrations, through parliament's methods of controlling the priorities of its legislation, this piece of legislation has got out of timing somewhat. We would like to see it dealt with in the spring again.

This bill was introduced in the fall of 1970 to deal with an 18-month period beginning January 1, 1970 and extending through to the end of June, 1971. There are certain aspects of the legislation, and our budgetary control pursuant to other statutes, that are authorized by Order in Council pursuant to the CNR Act and the Financial Administration Act, but through history and tradition it was deemed appropriate that the CNR, because of control mechanics should endeavour to put all of its financing procedures and requirements and the spending of its own depreciation money into one piece of legislation. This is what this bill supposedly does.

The bill went into the house in the fall and was delayed there owing to the fact that there were emergency pieces of legislation that had to be dealt with. So the forward motion of that bill was delayed in the House of Commons. Similarly, the CNR, by parliamentary reference of the House of Commons, was directed to go before the Transport and Communications Committee of the House of Commons to deal with two matters. One was a matter of pensions on the CNR. We appeared before that parliamentary committee in June of last year. I appeared before the Commons committee prior to that on two other occasions, dealing the statements of the CNR, the deficits of the CNR and the borrowings of the CNR, which also have to go into the Appropriation Act.

The pension matter was dealt with before the parliamentary committee, but we were still under notice to come back to deal with the pension matter again, and were still under notice to come back and deal with the financial structure of the CNR, which is a very large matter. It was the intention of that parliamentary reference to deal with all aspects of the financial structure of the CNR, the objectives of the CNR, the accountability of the CNR and the control of the CNR, and that sort of matter.

The session ended, I believe, in October. We did not go back and deal with the financial structure. But immediately thereafter the reference was made again so that in a week or two we will go before the committee of the other place to deal in toto and in a broad manner with the financial structure of the company.

Senator Benidickson: Will you be going to the House of Commons Transport and Communications Committee before the printing and publication of the 1970 Annual Report?

Mr. Vaughan: That could well be. That really is up to the wishes of the committee. We will go when they ask us to go.

Senator Benidickson: But your intention and your planning are to go pursuant to a commitment of more than a year ago.

Mr. Vaughan: And renewed again.

Senator Benidickson: By a new reference in that place?

Mr. Vaughan: Yes, sir.

Senator Benidickson: Well, you will be prepared to look at the financial history of the Canadian National Railways and even its forward planning.

Mr. Vaughan: That is correct.

Senator Benidickson: With respect to capital as well as annual expenditure?

Mr. Vaughan: Yes, sir. I was just at the point of reminding Senator Grosart of our conversations of last year where he asked me about improvements, and I said certainly the bill was capable of improvement; but it depends on what is the objective of that. There had been discussions during the year with the appropriate departments of Government about the legislation. We are continuing those and they will

be continued. Then, of course, we go before that committee to deal with the subject. Added to that fact also was the examination of the Air Canada legislation.

The Air Canada legislation was passed in 1937, and, except for a few minor amendments, has not been revised since. Similarly, the capital structure of Air Canada has to be looked at, and discussions about that subject are going on between representatives of Air Canada and the relevant Government departments, because they have a 94 to 6 debt to equity ratio, or in that vicinity, and the legislation covers the administration of that corporation. So it seems due for review in light of today's conditions.

On all of these matters I am being very frank and I hope that I am not offending any of the Government people sitting here listening—all these things have been going on, but in light of all those matters it was considered by the Government that it was appropriate to proceed again with the bill in this fashion. That was the decision they made. The bill, as I say, was held up in the Commons due to other things, so we are here today to ask you sincerely to pass the bill. We need the bill. If we did not need the bill, we would not be here. We need the six-month matters referred to in it. Canadian National needs the preferred stock purchases provided in the 1952 Capital Revision Act and extended by this legislation. Furthermore, the Government needs the authority to give us funds pursuant to our requirements in the first six months on the deficit account of 1971.

Air Canada as well needs money pursuant to this statute, so this bill is important, and this is why we have come to you today to try to explain it, and we hope you will bear with us. If there are broader issues, and I know there are, we can deal with them. I would deal with them and the Company would deal with them, if the Senate so wishes.

Senator Grosart: If I may make a comment on that, Mr. Chairman, I am very grateful for the statement of Mr. Vaughan. He asked us to bear with him, and I will ask him and his colleagues to bear with me. The reason I raise these matters is not because I want a witch hunt or because I want to go back over the past and cry over it, but we do have evidence, statements by the Minister and representatives of the Corporation, that this is not a satisfactory way to handle this matter. I shall use the appropriate quotation elsewhere. We have the statement from the Minister that we are approving something which has already been done. We have his statement of last month that this is not a satisfactory way. This was made in the Transport and Communications Committee of the other place on February 16th. That was the only session that dealt with this bill.

We also have the statements that the Company has had to do, and I quote, "all manner of things to keep the Corporation afloat in a sense." This is a statement by the Minister that because of this kind of delay it has been necessary "to do all manner of things." I suggest that a parliamentary committee faced with that statement should know what those "all manner of things" are. It is ominous that a company, a Crown corporation, should be put in that position. I am very much against its being put in that position.

Therefore, I believe there are two questions properly before this committee. The first one is: How can we improve this mechanism? The second one is: How can we speed it up so that the Minister does not have to come before a parliamentary committee and say he will not take responsibility for this bill? I say that, honourable senators, because that is the statement made by the Minister. He said that before the parliamentary committee. I see some eyebrows raised, but let me quote:

> I do not want to take responsibility for something that has been embedded in the system for decades really, but nevertheless it is something that in my judgment we ought to get rid of or improve in some way so that we do not have the kind of situation where it is in a way an after-the-fact judgment.

This is the statement of the Minister responsible for the bill and is to be found on page 120. I suggest that when we are faced with statements like that, I personally at least am not too much concerned about the reactions of any senators to my questions.

The Acting Chairman: In this regard, honourable senators, perhaps I should point out that I was asked by Senator Grosart yesterday if it was possible for the Minister to be present at this meeting. I had no authority since I am not the chairman of the committee. It is only when it was moved this morning that I act as chairman that I had any authority to represent the committee, or to talk on behalf of the committee. Nevlertheless, I did contact the Minister yesterday, and he indicated that it was almost impossible for him to be present at this meeting this morning, but he was prepared, if so requested, on another occasion—for example at the presentation of the Estimates of his department—to appear before this committee of the Senate and discuss transport in general as well as the CNR and Air Canada. I thought I should make this clear to honourable senators.

Senator Grosart: Mr. Chairman, I should be very happy to see us move through this matter quickly today. I do not believe we can reach the conclusions that perhaps we should reach in reporting back to the Senate, and in discharging the duty of this committee. I would suggest, therefore, that as far as I am concerned, it is not necessary to go through the whole laborious process of trying to understand this bill. I do not understand it and I have tried for a year to do so. I doubt very much if anybody does understand it. I am quite convinced that no member of Parliament does, and there is clear evidence that the Minister does not. I am only interested in seeing how we can improve this. Therefore, I would like to ask two main questions only.

The Acting Chairman: You may proceed.

Senator Grosart: Is it possible to improve this situation so that it would become in effect a normal operation to have a Crown corporation responsible to Parliament present its Estimates in the usual way, and have those Estimates approved normally in time? Secondly, is it possible that this matter can be handled in future in such a way that the Corporation will not be in the position of resorting to "all manner of things to keep the Corporation afloat"?

If our witnesses say that they believe it is, my suggestion then would be that perhaps—and I am being very careful here because I do not want to get into the political side—they might consider putting down in a memorandum the kind of mechanism that could be developed to prevent this kind of situation arising so that a year from now we will not be presented with the same dilemma, the apparent conflict between authorizing, providing, approving—all words which are very hard to reconcile to anybody who reads these things in ordinary English.

Mr. Vaughan: As I mentioned a moment ago, senator, my remarks on this point will have to be limited to what I consider to be my competence to comment upon them. I do not presume to tell the Senate or the Commons or the Government how to administer their affairs, but I would be glad and my people would be glad to advise the Government and assist the Government in dealing with this legislation and the improvement of this legislation. As I mentioned previously, trying to simplify what is here is not the whole issue, as I see it. We can write this in very simple language, or the Department of Justice or somebody else can do it, but it really goes to the whole matter of how the Government and the country wishes to have its Crown corporation run and administered.

Secondly, what is the measure of accountability and control? These are the two issues and these are the matters that we wish to discuss with the Government. We wish to discuss these with them, on account of Air Canada and on account of the railway. These are two great companies serving the commerce of Canada and they operate on a commercial basis under relevant control statutes. That goes to a whole gamut of philosophy as to how proprietary corporations are to be operated and what is the measure of control that the Parliament of Canada is to have over them.

Going back in history—many of the senators here will know this, Senator Benidickson and the others—going away back to the Drayton Acworth Commission, and the various commissions . . .

Senator Benidickson: I frankly confess that I do not remember. It is so complicated that I have forgotten.

Mr. Vaughan: Anyway, the Drayton Acworth Commission was in 1917, and that was a prelude to the taking over of the bankrupt companies that went into the amalgamation of Canadian National. It was decided then that they should be operated on a commercial basis accountable to Parliament in a proper manner.

Times change and we live in a different world. There are different demands on companies and society, and Canadian National and Air Canada want to be able to respond to these demands, so we would welcome that kind of discussion.

Senator Benidickson: There is the question of whether it is duplicated. You have intimated that you contemplate that the House of Commons is interested in this subject as a whole.

Mr. Vaughan: We are under reference there, as I told you. It is not merely a matter of just changing some debt into equity. I think it has to be more than that, and that is what Senator Grosart referred to, too.

Senator Grosart: Mr. Vaughan, I hope you do not mind if I read between the lines of your statement.

Mr. Vaughan: I did not leave much Space. I was trying to do it in single spacing. Do not make it too big.

Senator Grosart: I think you did exceedingly well, under the circumstances.

Senator Benidickson: I am not very familiar with the bill, but I am familiar with this type of statute. As Isaid the other evening, in the Senate, I have a record of piloting similar bills in my years in the House of Commons. My concern is this! My memory goes back to the capital revision of 1952. I participated, as assistant to the Minister of Finance in advancing that legislation. There was, prior to that, in 1937, a previous capital revision. We hear frequently from some sources, including after-dinner speakers representing the Canadian National Railways, that they are saddled with a debt structure, and usually they talk about deadwood that goes back to the amalgamation of these roads in about 1923.

My recollection is that in 1952, when we did revise the capital structure of the Canadian National Railways, Parliament was more or less told that henceforth it would be a reasonably sound corporate set up and could pay its way. Then, in subsequent years, we had a bill similar to the bill that we have before us today, an annual bill, asking for more capital funds.

On each occasion there was evidence from the president, who appeared in those days before the House of Commons committee with a big staff. He always gave us the assurance that if we inject this new capital for whatever it might be—something technologically new like dieselization or the hump system of handling freight, or the provision of new and modern cars for handling certain products in larger bulk quantities, and all this kind of thing—it would pay off as it would pay off in any other company, or the corporation would go broke.

My interest is in this bill, of course. You are asking for a certain amount of additional capital, that another company would have to go to the investment market for, and prove to investors that they would get a return on the money that was injected into the capital structure. How can we get some review of the capital structure and its relationship to profit and loss, and a reference to how much non-interest bearing money has been provided in that period? How can we get some kind of statement from CNR, bringing us up to date from the revision of capital debt in 1952? This bill will add to the capital debt, despite what Senator Cook says, although a certain portion of the funds to be spent will be generated within the company from depreciation and such sources.

Mr. Vaughan: Perhaps, senator, you would not mind if I refresh your memory for a moment?

Senator Benidickson: Yes.

Mr. Vaughan: The money that is shown on page 2 of the bill is not money that comes out of the consolidated revenue fund. To use an analogy, we come to you as a "shareholder", asking you to "allow us to spend the money that we have". This is self-generated money.

There is $229 million, less the normal amount of approximately $30 million for uncompleted work, self-generated funds from depreciation accruals, and the purchase of preferred stock by the Government, and of course, the $10 million provision for branch line borrowing, which was not used.

Senator Benidickson: But that preferred stock is in an unusual situation.

Mr. Vaughan: I agree with that.

Senator Benidickson: Is that $100 million?

Mr. Vaughan: No, that is based on a formula of 3 per cent of the gross revenues from the operations on an annual basis, and it would bear 4 per cent if we were in a profit position to pay it.

Senator Benidickson: That is right. But in very few of the years since 1952 has any of that 4 per cent been paid on that preferred stock. Is that correct?

Mr. Vaughan: In some years. In 1952 we had a profit, in 1953 a profit, in 1954 a loss, in 1955 a profit, and in 1956 a profit of $26 million. Over the five years I have mentioned, there was a total profit of $8 million, which went back to the Government. We did not retain it. You are right on that equity, but—

Senator Benidickson: That, of course, did not pay 4 per cent in the four or five years in which the $100 million was spent.

Mr. Vaughan: Let me see. From 1952 to 1957 it would be five times 30.

Senator Benidickson: It would be 5 times 4.

Mr. Vaughan: It might have been $100 million.

Senator Benidickson: It paid more than 4 per cent.

Mr. Vaughan: Yes. That is equity. That is the same as if you buy stock in any company. If it does not return a dividend or if it does not appreciate, then the purchaser of the stock will have to recognize that that is so. But this budget does not add to the fixed debt. It does not add to our fixed interest. You mentioned the other two capital revisions. That is correct. There was one in 1937 which was not really an overall capital revision, but it was a reorganization of the structure in the sense of providing relief from the interest burden which had been accumulating interest on the interest so that that capital revision in 1937 was really just a reorganization.

Senator Benidickson: But any private company would either have had to reorganize or go broke.

Mr. Vaughan: But bear in mind that you have been dealing with broke companies.

Senator Benidickson: So it was wiped out.

Mr. Vaughan: No, not this one. Not the 1937 one. The 1952 recapitalization was the one where it was converted. Half of the outstanding debt was converted to proprietors' equity. You will see it in our annual report referred to as shareholders' equity. That lowered our interest charges from year to year to a given point. Later I want to ask you a question about this, but as we went on through the fifties and sixties, because of the lack of depreciation practices employed by the company in past years, we had to borrow all of the new money to produce the dieselization and the modern methods that you talk about..You will see those borrowings again in the annual reports that are tabled.

When Mr. Gordon appeared in 1952 there were many long discussions with the Government, involving Dr. Clark and others as well as the minister of finance of the day, having to do with the forward financial structure of the company. The bill that was passed in 1952, in certain respects, had a nine-year limit on it.

Senator Benidickson: A nine-year or a ten-year limit.

Mr. Vaughan: Well, ten, yes. So in the early sixties the provisions of that legislation, as I recollect the history, were to be re-examined, and since then the provisions that expired in the 1952 act—

Senator Benidickson: You promised to pay $100 million starting ten years after 1952. It was something like that.

Mr. Vaughan: You are dealing with a $100 million bond now, which is different from what I am talking about.

Senator Benidickson: We have a clause in here, and we have had them in recent bills, which again postpones or forgives you that obligation. Is that correct?

Mr. Vaughan: Well, there was a $100 million bond that was to be interest-free and that was part of the rearrangement. I have a note on that somewhere here.

Senator Benidickson: There is a similar thing in this bill here before us today.

Senator Grosart: Is that what is commonly called a moratorium, Mr. Vaughan?

Mr. Vaughan: Yes, I know what is in the bill, but I was looking for the note I had on that bond.

Senator Benidickson: It is in section 13.

Mr. Vaughan: I know it is in the bill, senator. I was trying to find a note I had on it. It is a $100 million bond. That bond was given and was to be interest-free for ten years. It is to mature in 1972. At any rate, I cannot find the note.

The Acting Chairman: You are right. It is 1972, Mr. Vaughan, because it is one year commencing from the 1st of July, 1971.

Mr. Vaughan: But that moratorium was really just part of the overall financial rearrangement of that time, when $762 million was put into equity, and there was another $100 million as the debt where we were to be forgiven the interest for a given time and then it was to mature in 1972.

Senator Benidickson: What was to mature?

Mr. Vaughan: The $100 million bond.

Senator Benidickson: It was a single $100 million.

Mr. Vaughan: That is correct. The rest is the unconverted half of the old debt, and we are paying our interest on it now. This is what brings us up to the $74 million of interest we have to pay. These are the matters that have to be looked at again now.

Now, somebody mentioned a statement. I really do not wish to be neglectful of making any statements that I undertake to make, but my question is what do I do if I am on notice to appear before the Commons committee about this matter? I will ask your indulgence in advising me what to do about that.

Senator Grosart: I certainly would not presume to advise you, Mr. Vaughan, as to what you should do in respect of a notice from the Commons. I would be frightened to death to even make a suggestion.

Mr. Vaughan: I guess it is a rhetorical question. What I really do not know, and this refers to my previous remarks, is what to do in such a situation. Similarly, if you had a reference to us here and then you started reading that I was over somewhere else making statements, what would be your reaction? That is all I am saying to you.

Senator Benidickson: This duplication does bother me, and I do not know which will come first. I asked the leader in the Senate, since he is the only minister in the Senate, whether we could get from him, if this bill is passed, a commitment similar to the commitment made by Mr. Jamieson in the House of Commons to the effect that by

one means or another they will be examining the matter. I would refer you to the committee proceedings that Senator Grosart was quoting from, namely, those of the Transport and Communications Committee of the House of Commons, Issue No. 1 for February 16.

Now you tell me that they are giving you notice that they will examine some of the items that I am interested in, such as the capital history of the CNR since the Capital Revision Act of 1952. I am not particularly anxious to have duplication, but I will read the evidence with interest.

I will speak to the Chairman and see how soon he is going to call you. If he has other priorities for that committee it may be a long time forward. Then, when your annual report for 1970 comes out, I might ask for the approval of the Senate to have the CNR officials come back to us, so that on the basis of the 1970 annual report we might have an opportunity to go into some of these questions that you will recall we are interested in. You probably read what I said last week.

Mr. Vaughan: Yes.

Senator Benidickson: You have explained the $100 million and the moratorium on that, and the moratorium that is asked for again in clause 13 this year. With respect to the net beyond depreciation and the sources of money internally generated, what are you asking for in this bill in the nature of new capital advances from the Government?

Mr. Vaughan: The railway is asking for nothing except the possibility of $10 million of borrowing for branch line purposes which we may or may not need. We put it in there in case our sources of funds do not come up to requirement.

Senator Benidickson: I am sympathetic with you in respect of branch lines, because in some instances political decisions were made for certain lines to be built that were incorporated in your capital structure for ownership andor management.

Mr. Vaughan: If I may amend my last answer, the $10 million for branch line borrowing was not used in 1970, so the only possibility is the $2 million.

The Acting Chairman: You mean of new money?

Mr. Vaughan: That we may borrow.

Senator Cook: Is it correct to say that the Government will find about $30 million for preferred stock under this bill?

Mr. Vaughan: Yes. We do not call that borrowing, however.

Senator Benidickson: That is the injection of what you call new equity.

Senator Cook: You call that new money.

Senator Benidickson: I would call it new money because if I was an investor, based on the recent history of the road, I would not think I was going to earn any interest on it.

Senator Cook: Does not this act also obligate the Government to fint the amound of the deficit of the CNR for 1970, if any?

Mr. Vaughan: Yes.

Senator Benidickson: That leads me to my next question. Over the years in which you have had a deficit, the Government usually advances that deficit by an item in the supplementary Estimates for the fiscal year, and sometimes it has been for a substantial number of millions of dollars. Now are those deficits accumulated on your books in a way that obligates you to pay any interest on them?

Mr. Vaughan: No, sir.

Senator Benidickson: So that that again is practically a gift from the shareholders?

Mr. Vaughan: I would not call it a gift. I mean we operate the company for Canada. These are the financial arrangements that Canada undertook to carry out, and we are part of it. We are your representatives in dealing with it, but we try to deal with it in a competent and business-like manner.

Senator Benidickson: But you are under no obligation to pay back or consider that as worthy of interest payment, or anything else?

Mr. Vaughan: No, that is what the 1937 act wiped out.

Senator Cook: That debt payment in 1969 was in the order of $24 million, was it not?

Mr. Vauhgan: Yes.

Senator Cook: Do you know what it will be in 1970?

Mr. Vaughan: The 1970 report which will be out in two or three weeks' time gives the results of the operations. The 1970 deficit will be slightly higher than that of 1969 due to many factors. It will not be too much higher, perhaps $3 million or $4 million, or something like that. Short of disclosing the actual figure, it will be in that zone and it will probably appear in an Estimate somewhere. We had a difficult time in 1970 to control matters since the economy generally had difficulties here and there, and the automobile strike affected us also. There were matters like that that affected our business, but we thought we were able to control it pretty well within that zone. But our net before interest, you know, is in the $45 million to $50 million zone, and if we had a good clear fair shot at trying to handle this thing without a 50-50 equity, we could do much better with this company.

Senator Benidickson: That is what I was coming to. When you issue your press release or whatever manner you use to present your annual report, you usually make a statement indicating what your operating profit is, if there is an operating profit, and I guess there has been one in recent years. Also in that report you add a statement similar to what you have just said, that if you did not have to pay interest on certain things, your deficit would not be X number of dollars. Now what are those things that you think you should be relieved of paying interest on?

Mr. Vaughan: Well, there is the debt. There are many bonds in here and a debt structure which amounts to $1.8 billion. We have referred to capital revision for some time, as I said a moment ago, and Parliament has referred to the capital structure and has referred the matter to the Commons committee. We know that any company cannot be debt free. It would be a nice kind of company to have if it were debt free. It would be a beautiful operation if you had no debt. But it is the relationship of the debt to equity that kills us.

Senator Benidickson: As I recall the situation in 1952, the then officers of the company were fairly satisfied with the

revision in capital made in 1952, and said that they could handle that as any other business corporation, and then in subsequent years when they wanted additional Government borrowings for such things as dieselization and other matters, they similarly said that they would pay off. Now why should not the company consider that that portion of the debt that was left out in 1952 and what has been incurred since 1952 in annual borrowings, which were always alleged to be on a commercial basis, as worthy of interest, as any other company would, and as part of its debts?

Mr. Vaughan: That is what it is today, and somebody has to pay.

Senator Cook: What is your annual interest? Is it about $80 million?

Mr. Vaughan: It is $74 million. What happened in 1952 was that the officers of the day dealt with the matter at great length, and with a great deal of analysis and study, and tried to peer into the future, as any business organization does, and they probably would have wanted more relief from the debt they had going back to past companies if they could have got it. But what appears in the 1952 statute is the accommodation that was reached between the Crown and the company.

Senator Grosart: That was the best you could get at that time.

Mr. Vaughan: Yes. That was to be reviewed after a given period of time based on experience. During the fifties there were many technological changes that came about. We had to bear the vast expenditures on the switch from steam engines to diesel, and all the associated plant changes that went with that.

Senator Grosart: And so did your competitors.

Mr. Vaughan: So did our competitors, but they are a wealthy company and a good company. They are a well-run company, and I take no credit away from them. That company is a credit to Canada, but you must bear in mind that that company was a cohesive unit, and it was designed and built as such and so it was able to control its destiny from the beginning. What was handed to the management of this company in 1919 to 1923 was about 300 or 400 bankrupt companies, and that is what we have been trying to deal with ever since and also with the merging of the diverse companies and lines that went into that. Canada at that time had more railroad mileage than any other country in the world, but I will not go over the history of that.

Senator Benidickson: That is what I call some political load that was put on your shoulders.

Mr. Vaughan: What we are saying now is that if we had the same depreciation practices that extend back through the history of all those companies and the one that eventually emerged, we would not have this big debt structure on our neck today.

Senator Benidickson: Despite the 1952 act?

Mr. Vaughan: Despite the 1952 act, and we think that perhaps that bears looking at.

Senator Cook: It is also fair to say that you are operating certain services now by statute and otherwise that you would not otherwise operate. There are certain services that are not profitable that you have to maintain.

Senator Grosart: This applies to the private company too.

Mr. Vaughan: Well, we get into the National Transportation Act there, and you know the basis of that.

Senator Cook: My point is that with the costs of operation over the past ten years, the CNR has done a fairly good job to contain its debt to a figure around $24 or $26 million in view of the fact that the costs of operation keep going up all the time. I do not think it is an unsatisfactory performance at all.

Senator Grosart: You meant the deficit of $24 million, not the expenditure.

Senator Cook: The annual deficit in the order of $24 to $26 million.

Senator Grosart: As a guess, what percentage of the $74 million in interest would you say would not be applicable if the CNR had had what I call, for want of a better word, a clean start? In 1952, for example, the arrangement was that half of the outstanding debt would be converted to shareholder equity. I think what you are saying now is that that was not a realistic arrangement.

Mr. Vaughan: In the light of the day—and there are a lot of competent people who dealt with it—but in retrospect, looking back over the time, it looks to us that it could have been done better.

Senator Grosart: I am asking what percentage of the $74 million would you say is not the kind of debt that the CNR would have, if it had had what I call a clean start? Perhaps you would relate that to the suggested deficit of $24 million?

Mr. Vaughan: About the deficit itself, I think it is a fair statement for me to make that, if we had not gone into the capital expenditures of modernization of the plant, the deficit would be five or six times larger than it is. Your second question had to do with the relief of the interest. We think we could make a case, and we have to convince the Government of this, for a relief of $50 million to $60 million.

Senator Grosart: What would that relieve you of?

Senator Benidickson: I do not understand. That sounds very small to me.

Mr. Vaughan: In interest.

Senator Benidickson: An annual relief of that amount?

Mr. Vaughan: No. If you look at the last annual report you see that the interest is $74 million. I am saying that I think and hope we could make a case that would rearrange our capital structure in such a way that would cut that interest by between $50 million and $60 million. When you relate that to our ne operating position, we are in a profit position.

Senator Grosart: If you are able to convince the Government to do that, you would then show a plus net earnings in your annual statement?

Senator Burchill: I enjoyed very much a book called *The National Dream* Which is a history of the CPR. Your should get someone to write a history of the Canadian National, and tell the whole story.

Mr. Vaughan: We have, senator, I am sure. I am sorry if this is not in your hands. We have got more than a dream.

Senator Langlois: You have a nightmare.

Senator Grosart: You have a nightmare, Mr. Vaughan.

Mr. Vaughan: Call it what you like, it is a challenge, we try to do the best we can and we think we do a good job for Canada with this company. Mr. Smith, you should send some of these books to the senators. There are histories of this company. One starts with 1836 up to a given time, and a second brings it up to the amalgamation in 1923. The third book is now in the course of preparation by Colonel Stevens a roted historian, to bring the history up to 1950.

Senator Burchill: *The National Dream* is very readable.

Mr. Vaughan: If you watch the hockey games at night, you will notice that the Canadian National advertising talks about the fulfilment and the progression of the Canadian dream, so we are in the dream picture, too.

Senator Grosart: You have not got the same copywriter, have you?

The Acting Chairman: Are there any further questions?

Senator Benidickson: Would someone have at his fingertips a figure showing what was appropriated since 1952, net, by Parliament, for your deficits—that amount of money injected into CNR?

Mr. Vaughan: The new money department. I think you get these annual reports?

Senator Benidickson: Yes.

Mr. Vaughan: In the last one published in 1969, at page 46, you will see a statement of our position, going back to 1945. It shows our net railway operating profit or loss, our other income, our surplus or deficit before interest, our interest on debt, our surplus or deficit, and then the freight revenue per ton-mile. That is a concise statement. Do you have that?

Senator Benidickson: Yes. As to your interest on debt, that column is total interest?

Mr. Vaughan: That is the Canadian National Railways interest.

Senator Benidickson: And after 1952 it goes down very rapidly.

Mr. Vaughan: That is right.

Senator Benidickson: And that is because you did not have to pay any interest henceforth on the $770 million?

Mr. Vaughan: You see an almost equal division there, from $48,117,000 to $25,415,000. You remember I said that the $1.4 billion was divided about equally between debt and equity.

Then is goes on. Then it started to move up.

Senator Benidickson: But you are now back in 1969 to $74 million.

Mr. Vaughan: To $74,205,000.

Senator Benidickson: It is $74 million in interest alone, after we reduced it in 1952 to $25 million.

Senator Cook: That deficit represents 20 per cent of our assets. You take in rolling stock and improvements and so on.

Mr. Vaughan: Yes, we are dealing with a $4 billion corporation here. In any event, we have things to say about the capital structure and we will say them at the right time.

Senator Grosart: I have a few questions for information. First, could you tell the committee, Mr. Vaughan, what part of the $688 million requires authorization under the bill before us?. Perhaps I should explain the $688 million figure by quoting the minister again. He was asked, at page 118 of the House of Commons committee's proceedings:

> Can the Minister tell me just exactly what amount, both for CN and for Air Canada, is authorized in this bill? Is it $309 million or is it $688 million roughly speaking, including the 13 million pounds sterling in borrowing.

And the minister replied:

> I would expect it was the latter figure.

I am not going to ask you to say whether the minister is correct or not, because there are many ways of adding up the figures. I merely ask you how much of the $688 million in transactions—I am not saying expenditures, but transactions—requires authorization under the bill before us?

Mr. Vaughan: Senator, I have difficulty with the $688 million figure, frankly.

Senator Grosart: It is the minister's figure—it is endorsed by the minister.

Mr. Vaughan: I know.

Senator Grosart: I have had many difficulties with it. It is a rough addition of all the figures.

Mr. Vaughan: Let me just try and explain it. The figures are not additive.

Senator Grosart: They are not transactions, they are expenditures. They add up in my calculation to $688 million in transactions. We are asked here to authorize not only expenditures but transactions. I am asking you again how much of the $688 million requires authorization.

If that is a difficult question, I might suggest, Mr. Chairman, that Mr. Vaughan could let the committee have the answer.

Mr. Vaughan: I am sorry. I am on a different wavelength.

Senator Grosart: I know it is a difficult question.

Mr. Vaughan: I am on a different wavelength; I am sorry. I did not add them up that way. The $229 million as Senator Cook pointed out was a use of our own internal generated funds plus the $32 million that the Government buys in stock.

Senator Grosart: Mr. Vaughan, any parliamentarian has to remember that we are not merely authorizing expenditures. We have to be concerned with transactions. Transactions may be just as improper as anything else—and I am not suggesting any are.

The Acting Chairman: Perhaps Mr. Vaughan could take notice of your questions, Senator Grosart. He could then consult with his officials and send a letter to the committee to give us the information.

Senator Grosart: I would agree with that.

Mr. Vaughan: I would not mind doing that. You quoted the minister and I would like to see what he said.

Senator Grosart: You used the phrase that I quoted, "all manner of things that have had to be done", and "the considerable problems", and I am now going to quote the minister who said, "the emergency measures that might have to be taken if this bill is not authorized quickly". I would ask you, first of all, if you have had to take any emergency measures in financing to keep the corporation afloat because of the delay in the authorization now requested. If so, what are the emergency measures? I am not asking this in a critical way. It is information as to why this kind of thing should not happen again.

Mr. Vaughan: If any of the press are here I hope that they will understand that my remarks are as a result of my being in a bit of difficulty when you ask me to comment on a minister's statement.

A bill taht was introduced in November has not yet been passed that is, as of March 11. Such a bill has to have some effect on us if we require the provisions—perhaps that is not the right word—or whatever is in the bill. I told you that it was an 18-month bill. There are certain aspects of the six months of 1971 that both companies need. Failing to obtain those moneys from the Government through the Consolidated Revenue Fund and the authorization of any borrowings or moneys to Air Canada, both companies have had to exercise tight financial control. I will not use the word "emergency", and I am not saying that they do not always exercise tight financial control. But bear in mind that we have a large cash flow, and you are dealing with a billion dollars in the Canadian National and $450 million in Air Canada. We deal with banks and we have lines of credit at banks. So we have been able to deal with banks and tide ourselves over until we get this bill passed.

Senator Grosart: I have every sympathy.

Senator Benidickson: That is the answer. You have had to deal, as other people have had to, with banks.

Mr. Vaughan: Yes, sir. If I cannot pay for refrigerator, I have to go to the bank. This is the same kind of thing.

Senator Grosart: I do not want to pursue that question. I have every sympathy with you and I asked the question only to get some information before the committee, because as I say, this kind of situation that we are now faced with should not happen again next year.

Mr. Vaughan: They are not in trouble. There is no serious disaster. There is no collapse. It has been inconvenient.

Senator Grosart: I will leave that, Mr. Vaughan. I am quite satisfied with your answer.

Now, how many subsidiaries does CNR have? About 30, would you say?

Mr. Vaughan: Yes, 30 or 31 subsidiaries.

Senator Grosart: To what extent does the subsidiary operation affect your profit or loss?

Mr. Vaughan: It is all blended in together in a consolidated system.

Senator Grosart: In total, if there is a deficit, you would say there is no deficit other than on actual operations on a kind of actuarial basis that you would like.

Mr. Vaughan: Yes.

Senator Grosart: What is the relationship between the profit and loss of the subsidiaries and the CNR itself? That is, how does the company relate to the system?

Mr. Vaughan: Did you have anything in particular in mind?

Senator Grosart: No. I just wanted to know whether the subsidiaries as a group affected the situation.

Senator Benidickson: Is the Hudson Bay Railway a separate entity?

Mr. Vaughan: No. That is part of the system.

Just looking at our annual report, on page 32, it shows that the Canadian National Railways Company is the parent. The Canadian National Express Company is a subsidiary. We have netted something out of that. The CNR, France is a company that holds Scribe Hotel in Paris, and the Canadian National Realties Limited is a company that has broad powers dealing in real estate transactions; any net out of that goes into the "other income" section of the consolidated account.

An hon. Senator: Is Pine Point a subsidiary?

Mr. Vaughan: No, sir. The Great Slave Lake Railway was built under the provisions of a special statute of Parliament, and the funds were allotted by Parliament to build a line in the interest of development of resources. It was then turned over to us for operation, so that it is part of the system of operation now.

Senator Benidickson: That does not come into the balance sheets.

Mr. Vaughan: Oh, yes, sir, it does.

Senator Grosart: That is when we had some ambition.

Mr. Vaughan: That is right. That was a good expenditure. That was opening up the north.

The Acting Chairman: What is your experience with your road transportation subsidiaries?

Mr. Vaughan: The trucking companies are listed here. We are netting something out of that. Roughly $2 million, I think—or $1½ million.

Senator Grosart: What about CN Telecommunications, Communications itself?

Mr. Vaughan: That is not operated as a separate company, but it is a separate division and it is making money at the rate of about a 7 per cent return. You might start saying, I suppose, that if we are telling you how good we are, where does the loss come from. I hope you do not ask me that.

Senator Benidickson: You manage certain transportation facilities in the Atlantic provinces, and I am thinking especially of ships. Are they part of your capital structure, or are they managed simply on Government accounts?

Mr. Vaughan: We operate the vessels between the mainland and Newfoundland, and between New Brunswick and Prince Edward Island. We operate the coastal vessels around Newfoundland.

Senator Hollett: Do you operate the buses?

Mr. Vaughan: Oh, yes, and the buses. The capital involved in the vessels is provided for in a separate vote of Government. The Government then picks up the short fall between the revenue and the expenses for those operations, and those appear in a separate Estimate that comes before you. But in the annual report we refer to the payments we receive on the revenue side for the operation of those services, and they are added into the railway figures.

Senator Grosart: Are you allowed to make a profit on that?

Mr. Vaughan: Well, they are not in a profitable position at the moment.

Senator Grosart: But is there a profit on whht you charge the Government for operating these services for them, or do you do it at cost or cost plus?

Mr. Vaughan: Incidentally, I should have mentioned the *Bluenose* as well. I am a maritimer. I should not have left the *Bluenose* out. That is terrible. We get a management fee for the operation of those, senator, bacause our whole Atlantic region staff operates these things.

Senator Benidickson: Is that a lump sum or a percentage?

Mr. Vaughan: First of all, for the short fall we are paid the whole amount. I do not remember exactly what the management fee is.

Senator Cook: Mr. Vaughan, you have given a deficit figure of $25 million in round figures, and then you have rounded off your yearly depreciation figure at about $200 million. I would be tempted to make the figure $175 million to show how you break even. How do you settle on a depreciation figure like that?

Mr. Vaughan: While that is being looked up for me, may I say that there is what they call a uniform classification of accounts.

Senator Cook: Who sets that?

Mr. Vaughan: That comes from the old Board of Transport Commissioners, now part of the Canadian Transport Commission. Depreciation rates on equipment are subject to regulation, so it is not a movable feast, if you understand what I mean.

Senator Cook: You have control over it?

Mr. Vaughan: There have to be certain charges, for example, on locomotives with maybe a 30-year life. We have detailed information, and if you are interested I could show it to you.

Senator Cook: No, I just wanted your comments.

Mr. Vaughan: In hotels and so on we depreciate in a normal business manner.

The Acting Chairman: Are there any further questions?

Senator Grosart: We have not dealt with Air Canada, and I think we would be amiss if we did not ask Mr. Vaughan for a report on Air Canada. I hope he will find it possible to project his report somewhat into the future, to the extent that he can reveal any projections that are now available for public information, as to the future separation of CN and Air Canada. We will fully understand if you say it is a matter you cannot comment on.

Senator Burchill: Are we all through with Canadian National Railways?

Senator Grosart: The chairman called for further questions.

The Acting Chairman: Do you have some questions on CNR?

Senator Burchill: I just want to make a comment on the operations of the CNR. A year or two ago when we met here I criticized, as a traveller, the *Ocean Limited* from New Brunswick—the time of arrival of that train in Montreal at 8.15 when the train for Ottawa left Montreal at 8 o'clock, so that we had to wait a couple of hours for the next train. That has been corrected, and I congratulate you very much ideed, because the *Ocean Limited* now arrives at Montreal at 7 o'clock and the train for Ottawa leaves at 8. That is great but . . .

The Acting Chairman: But!

Senator Burchill: Let me tell you something. You have taken away our dining car on the train from Montreal to Ottawa, and the arrangements for getting breakfast are, if I may use the expression, lousy.

Senator Grosart: Has the bar been taken out?

Senator Burchill: I am talking about getting breakfast now.

Mr. Vaughan: We did not make any arrangements for a morning bar.

Senator Grosart: I thought you would for the Maritimers.

Senator Burchill: We used to be able to get a nice breakfast on the train, and the dining car was full every time I travelled on that train. The last time I came here on that train the car was gone and I could find nowhere to get breakfast. Finally I found a little hole some place.

Senator Michaud: I am all for you on that.

Senator Burchill: Do you travel on that train?

Senator Michaud: Yes.

Senator Burchill: You should speak up about it, you know.

Mr. Vaughan: I expected you would ask that question, although I was hoping you would not. The matter of the dining car between Montreal and Ottawa is difficult. The passenger people have been dealing with it, and have been trying to deal with it in a responsible way. They have been trying to rationalize those services since they ascertained that the dining car loss was running at $300,000 a year. The reason is the short trip. Only so many can be accommodated in the dining car. Many passengers would use the car to have coffee and nothing else, while others may have breakfast. There has been some criticism of the present situation and we are steadily looking at the provision of eating and drinking facilities on that train.

It is proposed to have some café lounge bar cars, which will have a good selection of food so that people can have a light breakfast of cereal, fruit juice, coffee and things like that.

Furthermore, we are trying to make the equipment more attractive. This is a sketch of a coach. The problem we ran into was having the catering facilities some distance from

passengers' seats, so that when someone got his hot dog and coffee he did not know what the devil to do with it. One has only two hands and on getting back to your seat you have to stick the coffee between your knees and put the hot dog on the seat. We are going to have fold-over tables on the coach equipment, and that will provide an adequate service. It is surprising to note that since we took off the diner there has been no diminution in revenue.

Senator Benidickson: From the passengers?

Mr. Vaughan: From the eating facilities in the parlour car section, so-called. In the café cars we will have airline style trays to be attached to the seat, and light meals will be served there. In the lounge car there will be tables on which people can put food, and so on.

Senator Burchill: Do they carry the food through?

Mr. Vaughan: This is a sketch of the bar lounge. There are instant warm ovens, so that passengers can get hamburgers, hot dogs, cereal, fruit juice, coffee, chocolate bars, pop and things like that, and take them back to their seats, as I have just explained. You will see from the sketch that we are trying to make the bar car attractive. It is not our intention to endeavour to downgrade the Montreal-Ottawa service. Far from doing that, we think we are going to provide a good service. We want to minimize the loss. That seems to be an obligation we have in view of the number of people eating on the train.

The Acting Chairman: Mr. Vaughan, Senator Grosart asked a question about Air Canada. Perhaps you could give us a general statement.

Mr. Vaughan: It was about the relationship of the companies, I think.

Senator Grosart: Just a general statement.

Mr. Vaughan: A genaral statement would be that historically, as you know, since 1937 the Canadian National Railway Company has been the one and only shareholder of Air Canada.If you look in the Air Canada annual report you will see the $5 million equity, and Canadian National is the only one to hold that. It means they have a lopsided debt equity structure. In the past year or so there has been discussion between the chairman, Mr. Pratte, and the Government about a revision of the Air Canada legislation, and a revision of the capital structure of Air Canada.

So far as the relationship of the two companies is concerned, we agree that it is wrong that Canadian National should be the only shareholder of Air Canada. There is a case to be made for continued co-operation between the two, and matters they could do together that would be of benefit to both. That is the general principle of the discussions that are going on.

Senator Benidickson: The ultimate shareholder is the same, the public.

Mr. Vaughan: The ultimate shareholder probably. Canadian National might hold a very minor shareholding position in future arrangements, and the Government of Canada hold the rest. That is as far as the discussion has gone at the moment. There is no plan in motion to offer Air Canada stock on the market.

The Acting Chairman: Are there any further questions?

Senator Grosart: What is the financial position of Air Canada at the moment?

Mr. Vaughan: There again, the annual report will be submitted in March. Would you allow me not to answer that?

Senator Grosart: Yes, of course.

Senator Benidickson: This may or may not be a fair question. If we were to omit the Minister of Finance and the Minister of Transport, who are referred to several times in the bill, and their deputy ministers, who would you consider your senior liaison men between your Montreal head office for Air Canada and CNR and these two government departments in the day to day discussions or parliamentary liaison?

Mr. Vaughan: Well, there is, I suppose a liasion of minister to chairman. That goes on, as you would know. In other broad matters and these fundamental issues we are talking about, it would be with ministers or their deputies or their assistant deputies. In other respects, Mr. Taylor here is Vice-President of Air Canada and deals extensively on day-to-day matters as they affect government and bilateral negotiations which have to go on as between Canada and other countries with regard to route structures. Some gentlemen over here in the finance branch of the Department of Transport deal with our people on the Atlantic region in the operation of vessels. Our accounting department here deals with the Department of Finance. There is a broad relationship that goes on in the administrative control structure, as I would call it, on a daily basis. Is that what you mean?

Senator Benidickson: Yes, but I think I would sum it up by saying we are left in the position that basically our approach is it should be left to the Minister's office.

Senator Cook: Assuming that the conversations take the normal course, can we look forward to seeing you next year again on a similar bill?

Senator Grosart: I hope on a dissimilar bill.

Mr. Vaughan: Well, let us put it this way—we hope we will see you again.

Senator Benidickson: Just one more question; I just want a reaffirmation of something I did hot get solidly. In so far as new government money is concerned, to add to your capital, exclusive of what you may have to tell us about your 1970 deficit which we will deal with through the appropriation bills, did I hear correctly that you generate internally everything that is mentioned in this bill with the possible exception of that $10 million which is in the bill of last year and of which you say you used only $8 million?

Mr. Vaughan: We did not use any. We did not borrow.

Senator Benidickson: Apart from that altogether, when we come to a section like Section 3 where you are going to spend some $229 million on the railroad side for such and such road property, branch lines and all that, you are finding that money from within the company from such things as depreciation?

Mr. Vaughan: And preferred stock.

Senator Benidickson: Yes, continuing that which is $32 million.

Mr. Vaughan: That is correct.

Senator Hollett: Is the bus system across Newfoundland now a paying concern, or is it going into debt as the railroad did?

Mr. Vaughan: I can answer that question in general terms. The bus operation is not on a profitable basis. It is negative. I imagine it was expected it would begin as a deficit operation, but the deficit is nowhere near what the deficit for the railroad operation was. I do not have the figures in my mind so I cannot say exactly what it is. Somebody has helpfully given me a sheet of paper here. I have just submitted to the House of Commons an answer to Question No. 587. I do not know whether it has been answered yet or not, but it shows the deficit as $379,000. The increase was attributable to higher wages, repair costs, modification of buses and an increase in the number of buses operating.

Senator Hollett: Is that in a year, or since it has been in operation?

Mr. Vaughan: This was the 1970 figure. It has been a tough winter all round.

Senator Grosart: Mr. Vaughan, would the company regard it as a sensible solution of this problem of authorization, provision, approval and so on if the company were required only to come to Parliament for what Senator Benidickson has called "new money"? I ask that because this is the normal procedure with other Crown corporations.

Mr. Vaughan: Yes. I would answer yes to that question, subject to a further look at it. But my instinctive answer is yes.

Senator Benidickson: From your point of view I can understand that answer, but from the point of view of a parliamentarian Iwould not find it satisfactory. I think that the opportunity is utilized more in the other place than in the Senate, to look once a year at the budget and annual report. They represent the taxpayers who are the people who put up the money. I think that annual review is helpful and necessary.

Senator Grosart: May I make this comment? My suggestion would in no way change that situation, because a whole review can be made of any Crown corporation when it comes to Parliament needing money. My suggestion would not change that in the least, and, of course, there would still be many ways by which Parliament could refer the annual report or anything else to committee. I make this suggestion because we do have a completely anomalous position here in respect of the way this particular Crown corporation reports to Parliament. This is why I think we have a confusion because of these words, "authorization", "provision", "approval" and so on. However, you have answered my question and I am satisfied with the answer.

Senator Burchill: I move that we report the bill.

The Acting Chairman: There is a motion from Senator Burchill that we report the bill. Do you want to go through it clause by clause?

Hon. Senators: No.

The Acting Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Benidickson: Mr. Chairman, may I point out that we did not ask the witnesses to continue reading the two documents that were supplied to us. Will they be printed as appendices to the report?

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Acting Chairman: With the consent of the committee, they will be printed as appendices.

The committee adjourned.

APPENDIX "A"

Statement by CN witness to the Senate Committee on Transport and Communications regarding Canadian National Railways Financing and Guarantee Act, 1970.

MR. CHAIRMAN, HONOURABLE SENATORS:

Bill C-186, the *Canadian National Railways Financing and Guarantee Act, 1970,* deals with a number of financial matters related to Canadian National Railways and to Air Canada with respect to the calendar year 1970 and the first half of 1971. Its provisions follow very closely the form and principles of the corresponding 1969 Act, subject of course to the necessity of changing monetary amounts and dates and with a limited number of minor changes.

More or less in order of appearance, the main provisions of the Bill are as follows:

(i) authority in respect of capital expenditures and capital commitments by CN during 1970 and the first six months of 1971;

(ii) provisions related to the sources of moneys required to meet such expenditures;

(iii) provision for Government loans to Air Canada andor Government guarantees of obligations to be issued by Air Canada; and

(iv) the provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National or Air Canada.

Because of the technical nature of the Bill, it may be that notwithstanding Parliament's scrutiny of similar Bills on previous occasions, you would wish me to run through its several clauses in order. Should that be the pleasure of the Committee I would propose to do so at this time.

SECTION 1, of course, merely gives the Act a short title.

SECTION 2 sets out convenient definitions which have not been changed for many years.

SUBSECTION (1) of SECTION 3 covers Canadian National's capital program for 1970 and for the first half of 1971. Because of the practical necessity of programming and financing continuing capital projects from one year to another, and because delays unavoidably occur in the handling of Canadian National's Capital Budget and related legislation, it has been found necessary, and is regular practice, to cover not only the current year's programs but also their continuation and projection into the first six months of the following year.

ACCORDINGLY:

PARAGRAPH (*a*) of SUBSECTION (1) covers capital expenditures in the year 1970 to the aggregate extent of $229 million.

PARAGRAPH (*b*) of SUBSECTION (1) provides authority to make capital expenditures during the first six months of 1971 in discharge of obligations incurred prior to 1971 to an extent not exceeding $80 million, including $2 million for branch lines, and

PARAGRAPH (*c*) of SUBSECTION (1) authorizes new capital commitments prior to July 1, 1971 in respect of obligations that will come in course of payment after 1970 in aggregate amounts not exceeding $163 million.

SUBSECTION (2) of SECTION 3 authorizes Canadian National to make public borrowings of amounts needed to meet the aforesaid capital expenditures, but only in respect of branch line construction or for the purpose of repaying to the Minister of Finance any loans that may have been made by him to Canadian National for that purpose.

SUBSECTION (3) of SECTION 3 requires that the annual report of Canadian National will record the amounts af any such borrowings.

SUBSECTION (4) of SECTION 3 requires that expenditures to be made in the first six months of 1971—that is to say, expenditures for which authority is provided in subsection 3(1)(*b*)—will be included in the System's 1971 Budget.

SUBSECTION (5) of SECTION 3 requires that amounts to become payable under a capital commitment made pursuant to the authority contained in paragraph 3(1)(*c*) must be included in the Budget for the year in which payment will become due, that is to say, in the Budget for 1971 or for the subsequent year when the particular obligation will mature.

Thus each year's Budget is required to disclose all the capital expenditures to be made in that year notwithstanding that some of those expenditures will relate to commitments authorized and made in earlier years.

SUBSECTION (6) of SECTION 3 limits Canadian National's capital spending authority to the respective purposes mentioned in Section 3 and specifically provides that expenditures made under that portion of the 1969 Act (last year's Act), which covered the first six months of 1970, will be deemed to be expenditures made under subsection 3(1)(*a*) of the 1970 Act.

SECTION 4 also serves a variety of purposes being in this case related to the sources of capital funds.

Its SUBSECTION (1) authorizes and governs the issuance of the securities required in the case of any public borrowings made under subsection (2) of Section 3. SUBSECTION (2) requires that certain internally generated funds will be used to meet approved capital expenditures and SUBSECTION (3) fixes at $12 million the amount of the public securities that may be issued for the purposes of that Act (including the six months carry-over from the corresponding 1969 Act).

The $12 million figure represents branch line requirements, being the aggregate of $10 million provided for in subsection 3(1)(*a*) in respect of 1970 and $2 million provided for in subsection 3(1)(*b*) in respect of the first half of 1971. All other capital requirements of Canadian National are to be met without borrowings.

By SECTION 5 the Government is authorized to guarantee the public securities to which I have been referring.

By SECTION 6 procedures are established to govern the custody of the proceeds of sale of such securities and the application of those proceeds to the intended purposes.

The preceding six sections have dealt exclusively with Canadian National's capital requirements. SECTION 7 relates entirely to the borrowing of money by Air Canada for its own requirements and provides alternatively for loans to Air Canada out of the Consolidated Revenue

Fund (subsections (1) and (2)) or guarantees by the Government of Canada of bonds or debentures to be issued by Air Canada (subsection (3)).

By SUBSECTION (4) the aggregate principal amount of all such borrowing that may be outstanding at any one time is limited to $174 million in respect of the period January 1, 1970 to June 30, 1971 and to the Canadian dollar equivalent of 13,000,000 pound in respect of the period July 1, 1971 to December 31, 1974.

SUBSECTION (5) modifies subsection (4) by providing for a temporary overage during such short period of time as might elapse while both loans from the Consolidated Revenue Fund and guaranteed public securities issued to repay such loans might necessarily be outstanding.

SUBSECTIONS (6) and (7) of SECTION 7 govern the custody and application of the proceeds of guaranteed debentures of Air Canada.

SECTION 8 provides for the signature and effect of such guarantees of CN securities or Air Canada debentures issued under the Act.

SECTION 9 (1) provides, in respect of the Canadian National, for the making of loans out of the Consolidated Revenue Fund as an alternative to public issues. By SUBSECTION (2) it is limited to the same maximum aggregate principal amount—$12 million—as was provided for in subsection (3) of section 4; and by SUBSECTION (3) of SECTION 9 provision is made to regularize any temporary overage of outstanding amounts necessarily incidental to the issuance of public securities to retire Government loans.

The remaining few sections are carried forward unchanged, except as to effective dates, from previous F & G Acts and may not require more than passing mention.

SECTION 10 permits the consolidation of the capital requirements of the constituent companies of the Canadian National System so that, while Canadian National Railway Company occupies the focal point and would be the borrower in respect of any financing, the needs of all constituent companies may be served. In effect the budget is that of the Canadian National System not only of Canadian National Railway Company.

SECTIONS 11 and 12, which are in identical form, dealing respectively with Canadian National and Air Canada, provide that at any time prior to July 1st, 1971, when the earnings of the Company are insufficient to meet its operating requirements the Minister of Finance may advance moneys to cover the deficiency, subject to repayment to the extent possible.

SECTIONS 13 and 14 continue special financial arrangements that were originally included in the CNR Capital Revision Act, 1952 for a fixed term which has elapsed. They have, for a number of years, been contained in every CNR Financing and Guarantee Act.

SECTION 13 would relieve the Company of the payment of interest upon a sum of $100 Million.

SECTION 14 provides for the purchase by the Minister of Finance of preference stock of CN in an amount equal to 3 per cent of the System's gross annual revenues. This constitutes one of the sources of the funds required to meet the capital expenditures provided for in sub-section 3(1).

SECTION 15 is another of the category of special clauses and implements the statutory requirement that Parliament will appoint independent auditors to audit the accounts of the CN System.

APPENDIX "B"

CANADIAN NATIONAL RAILWAYS FINANCING AND GUARANTEE ACTS

A. INTRODUCTORY

This is intended to be a relatively brief review of the many aspects of the CNR Financing and Guarantee Acts in order to develop a proper overall perspective of their purposes and functions—being relevant to recurring expressions of concern that have been voiced about the timing of their presentation to Parliament.

This review assumes an understanding and acceptance of the fact that such timing is beyond the control of the companies concerned and is, from their viewpoints, partly compensated for by extension of the operation of each Act to an eighteen months period.

The references that will be found, noted in parentheses, throughout the remainder of this memorandum are to the relative clauses of Bill C-186 of the 1970-71 Session, i.e. to the proposed 1970 Act.

The present form of these Acts stems from a long line of predecessors extending backwards through the years to the early 1930's. Any comparative survey will disclose that succeeding Acts carry forward clear traces of their origins.

B. CANADIAN NATIONAL

(*a*) FINANCING—the basic purpose

While these annual Acts have several functions, the basic purpose of each is, as their short titles would suggest, to provide the statutory authorities that may be needed for financing the fiscal requirements of the "National System", which includes Canadian National Railway Company, its various directly and indirectly controlled subsidiaries, and the various properties and works that, being owned by the Crown, have been entrusted for management and operation to Canadian National.

Thus the legislation provides financing and guarantee authorities relative to Canadian National, as follows:

1. BORROWING

1.1 for current operating and income charges

1.1.1 accountable advances by the Minister of Finance as required by insufficiency of available revenues (Sec. 11)

1.2 for capital purposes

1.2.1 borrowing by means of public issues (Secs. 3(2)(*a*) and 4(1) & (3)) and the guarantee thereof by Her Majesty (Secs. 5, 6 and 8)

1.2.2 borrowing from the Minister of Finance (Secs. 3(2)(*a*) and 9(1) & (2))

1.2.3 public borrowings to repay the loans referred to in item 1.2.2 (Secs. 3(2)(*b*) and 4(1) & (3) and 9(3)) and the guarantee thereof by Her Majesty (Secs. 5, 6 and 8)

—it is to be noted that in recent years the amount of Canadian National's authority to borrow for capital purposes has been relatively small (Secs. 4(3) and 9(2)—$12 million), in marked contrast to its requirements and authority during the post-War period of plant renewal.

2. EQUITY

2.1 purchase by the Minister of Finance of preferred stock of Canadian National (Sec. 14), providing additional funds for capital purposes.

INTERNALLY GENERATED FUNDS

3.1 application towards capital expenditures of amounts provided for depreciation and debt discount amortization.

—although specific statutory authority for such application is not necessary, such a provision was inserted in the Act of 1950 to satisfy a desire of institutional lenders; it has been carried forward in subsequent Acts in order to reflect a corresponding item in the System's approved capital budget and to complement the other sections which afford sources of capital funds, as referred to above.

(*b*) CAPITAL EXPENDITURES

Statutory authority and control respecting capital expenditures by Canadian National is to be found in Section 37 of the Canadian National Railways Act, chapter 29 of the Statutes of 1955. Under that section Canadian National must submit annual estimates of its requirements for capital expenditures, etc. Approval of the budget, in which these estimates are contained, by the Governor in Council—under that section and section 80 of the Financial Administration Act—provides full authority for the Company to implement its capital program.

Nevertheless the current practice is that the annual Financing and Guarantee Acts should also authorize the same expenditures. Why? The answer is partly historical and partly a matter of the manner of presentation desired by those having responsibility for the form of the legislation.

Prior to 1951 CNR Financing and Guarantee Acts did not include any counterpart of their present provisions respecting capital expenditures (Sec. 3(1)). Although that old practice did not occasion any doubt as to CN's authority to make such expenditures, practical problems did from time to time arise in arranging loans of the amounts required to meet them because, with the spending authority flowing from one Act and the borrowing authority contained in another, it was very difficult to establish a positive relation between the one and the other to the satisfaction of prospective lenders. A slightly different but equally vexatious problem, since resolved, related to the exercise of the Company's necessary powers of expropriation. Accordingly, and to avoid those problems, the form of the annual Financing and Guarantee Acts was modified to include specific Parliamentary authority for the System's program of capital expenditures in categories and amounts which would reflect and summarize the budget approved by the Governor in Council. This was first done in Chapter 45 of the Statutes of 1951.

While the problems referred to in the preceding paragraph are no longer of the same practical importance as formely the practice of duplicating CN's authority to make capital expenditures, by its inclusion in the subject Acts, has been continued—presumably, if for no other reason than to bring together in one place the complete financial picture of CN's capital programs. In any event so long as Parliament is required to consider the financing aspects of the annual legislation the inclusion of such duplicate spending authority would not seem to be unduly burdensome—although its presentation to Parliament late in any calendar year may tend to provoke adverse comments.

(c) OTHER MATTERS

In addition to the matters referred to above these annual Acts also afford the means of providing for certain other necessary or desirable statutory provisions, as follows:

1. additional requirements respecting annual reports and budgets of Canadian National (Secs. 3(3) to (6))

2. clarification of the parent company's power to aid other System entities (Sec. 10)

3. annual extension of an interest moratorium on a specific obligation of the Company to the Government (Sec. 13), and

4. annual appointment of independent auditors (Sec. 15), as required by Section 38 of the CNR Act.

C. AIR CANADA

(a) FINANCING

For historical reasons, Government support of Air Canada's financing has also been provided for through these Acts. Such authorities, which follow generally the treatment of the sections that deal with corresponding requirements of Canadian National, are as follows:

1. borrowing for current operating and income charges by means of accountable advances from the Minister of Finance (Sec. 12)

2. borrowing for capital purposes by means of loans from the Minister of Finance (Secs. 7(1) & (2) & (4))

3. guarantees by Her Majesty of debentures to be issued by the Company to provide amounts required for capital purposes or to repay loans referred to in the preceding sub-paragraph 2 (Secs. 7(3) & (4) and 8).

(b) OTHER MATTERS

Indirectly, the appointment of independent auditors for Canadian National, as previously referred to, serves the same purpose in respect of Air Canada by virtue of Section 13 of the Air Canada Act which provides "the accounts and financial transactions of the Corporation shall be audited by the auditor appointed by Parliament to audit the accounts of Canadian National Railways."

D. CONCLUSION

As coordinated legislative measures the subject Acts serve a variety of useful and necessary purposes which, if not dealt with in this form, would have to be provided for in other statutory measures. Simplicity of presentation has, admittedly, been sacrificed for the sake of consolidation into a single Act. However that is not to say that the choice is wrong; it is probably most economical in terms of Parliamentary time—unless permanent legislation were to be substituted.

Montreal, 7 December 1970.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HEDARD J. ROBICHAUD, *Acting Chairman*

No. 2

THURSDAY, MARCH 11, 1971

First Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

(Witnesses:—See Minutes of Proceedings)

23612—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchill	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

23612—1½

Minutes of Proceedings

Thursday, March 11th, 1971
(2)

Pursuant to notice the Standing Senate Committee on Transport and Communications met this day at 11.40 a.m. to consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Robichaud (*Acting Chairman*), Burchill, Denis, Hollett, Kinnear, Langlois, Michaud, Pearson, Smith and Sparrow. (10).

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion it was resolved to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

DEPARTMENT OF TRANSPORT: Mr. R. R. Macgillivray, Director, Marine Regulation Branch,

Mr. Jean Brissett, Advocate, representing the London Group of Protection and Indemnity Associations, Montreal, Que.

Further consideration of the Bill was adjourned.

At 12:10 p.m. the Committee adjourned until Wednesday, March 17th, at 10 o'clock a.m.

ATTEST:

Aline Pritchard
Clerk of the Committee

The Standing Senate Committee on Transport and Communications Evidence

Ottawa, Thursday, March 11, 1971

[*Text*]

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 11.45 a.m. to give consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we now have before us Bill C-2, to amend the Canada Shipping Act, and I understand we have as witnesses, Mr. Jean Brisset, Q.C., of the firm of Brisset, Reycraft, Bishop and Davidson, 620 St. James Street West, Montreal, and Mr. J. J. Burke representing the Canadian Chamber of Shipping. I understand Mr. Burke is acting purely as an observer at this stage. We also have with us Captain Hurcomb, representing the Dominion Marine Association who will also have a few remarks to make following Mr. Brisset. Mr. R. R. Macgillivray, Director of the Marine Regulations Branch, Department of Transport is present, and I will ask him if he has any statement to make regarding this bill?

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Mr. Chairman and honourable senators, I am in your hands.

The Acting Chairman: Would you mind giving a very brief explanation of the bill?

Mr. Macgillivray: There is very little that I can add to what Senator Hollett said in the chamber on Tuesday evening last. The bill represents a change in emphasis in the Canada Shipping Act. Until now we have been interested mostly in the safety of life at sea, the safety of ships and the people and property on board them and this is a switch in emphasis and we are turning to look after the interests of the people who may be affected by ships, particularly in the matter of pollution. It is a long bill and it has a variety of provisions.

There are those provisions which are almost repetitious of what is already in the act on the matter of wilful and negligent discharge of pollutants, which are handled principally in section 737(2) and parts of sections 739, 741 and 769.

Another aspect is the safety provisions designed to prevent accidents to ships and thereby control pollution, and to minimize damage if an accident does occur, and also to enable us to take prompt and effective remedial measures when a large spill occurs.

A great deal of this objective will be achieved by regulations made under section 739. We already have in the Shipping Act, in section 410 particularly, wide powers of regulation in the Governor in Council in respect of the construction and equipment of ships. Section 739 provides for a considerable extension of these powers and regulations, in relation to technical matters relating to ships.

There are important provisions on liability. These provisions start at section 743 on page 11, and on these I am sure you are going to hear from some of the witnesses this morning. The principal change in the liability matter is that the bill will provide for owners of ships, and possibly the owners of cargo aboard them, to be liable for pollution damage without proof of fault on the part of the ship owner. There are some exceptions to this liability, which are set forth in section 744(1), but to a great extent the bill provides that wherever a pollution incident occurs the ship carrying the pollutant is automatically liable.

As a concommitant of that, there are provisions to limit the liability of the ship owner. The liability of ship owners for damage now, once it is proven that they were at fault, is limited to $67 per ton of the ship's tonnage. It is expressed in French gold francs in the act, that is for international uniformity, but it comes to about $67 per ton on the ship's tonnage. For pollution damage this is to be doubled, to roughly $134, but with an overall limit of $14 million per incident, regardless of the size of the ship.

Senator Pearson: What amount of pollution do you anticipate, before you take action against any vessels? What percentage of pollution would they discharge?

Mr. Macgillivray: The person who suffers the pollution would doubtless take action as soon as he suffered enough damage to make it worth his while taking action.

Senator Pearson: Supposing pollution is within nine miles, who gets the damage there?

Mr. Macgillivray: If there is oil on the sea, out at sea, and it is not damaging anyone, then no one has a claim for damages. But if the Government undertakes to clean up that oil in anticipation of its causing damage, then this bill provides that the Government will have a claim in damages for that clean-up cost.

In actions in the past, where the Government has stepped in to contain oil or remove it from a wreck, in

order to prevent its causing damage to someone, we proceeded as a volunteer and we have had no claim for these expenses.

Senator Hollett: In connection with the ERCO disaster, did your department have to pay any damage compensation to the fishermen?

Mr. Macgillivray: No sir, our department and our legislation deals only with ships and shipping. Therefore, we do not become involved in pollution matters. This bill does not deal with any matters relating to pollution arising from a shore based installation.

Senator Burchill: I would like to ask one question. If a vessel comes into a port and discharges oil, it may be an accident, as happens in a great many cases, who is the responsible officer in that port? I am speaking particularly of a port in the Maritimes, in Newcastle or Miramichi. This happened several times lately. Oil has been discharged from a vessel. Who is the proper officer in that port in the harbour to take action against that vessel? I see a pollution prevention officer is to be appointed. Does that mean that an officer will be appointed and stationed in the port?

Mr. Macgillivray: No, sir. At the present time when an accident happens, in Newcastle or in some other place where we do not have a Transport Department office, the dischargeable oil is required to be reported, under the regulations, to our nearest office, which is in Saint John. We get a report usually, if the ship owner is a responsible person, very quickly.

Senator Burchill: Who reports that?

Mr. Macgillivray: The master of the ship.

Senator Burchill: But where is the compulsion on him to report it?

Mr. Macgillivray: There is a requirement in the regulations.

Senator Langlois: Mr. Macgillivray, has the special branch so far been doing the investigation of these accidental discharges of oil into the harbours?

Mr. Macgillivray: Yes. It is normal, and indeed I think the regulations require it, that the report be made to the minister when a spill occurs either accidentally or wilfully. These reports come in and our local offices are usually on the spot very quickly in order to investigate them. Often charges are laid.

The Acting Chairman: Mr. Macgillivray, what Senator Burchill has in mind is something different. It is vessels that do it purposely in changing their oil.

Senator Burchill: Suppose there is a spill and everybody in the community knows that the river is full of the oil and they suspect that a certain vessel is responsible, but nobody takes any action.

Mr. Macgillivray: If they report it to our office in Saint John we will have someone up there taking samples from the water and from the ship's bilges within a very short space of time.

Senator Burchill: You say the captain is supposed to report it, but if he denies that it comes from his vessel he certainly is not going to report it.

Mr. Macgillivray: That is true. But if we prove that it did come from his vessel then he is subject to a penalty of $5,000.

Senator Burchill: But he is the only one who has to report it. That is my point.

Mr. Macgillivray: We do encourage everybody to report oil spills, and we have had from time to time good co-operation from such people as air line pilots who report spills from ships off the coast. We also do aerial surveys of the St. Lawrence by helicopter flights and fixed flights, and we have the coastal command aircraft who are supposed to report the spills to us. But when spills are in port we normally expect that somebody is going to see them rather quickly and let us know quickly.

Senator Langlois: Mr. Macgillivray, could you give us some idea of the number of prosecutions you have taken under the existing legislation? I know you have had several just in the St. Lawrence River.

Mr. Macgillivray: I think they are running at the rate of about 20 a year now. Actually, I suppose it must be about 50 in the past year.

Senator Langlois: I would say that you have about that many on the St. Lawrence alone.

Mr. Macgillivray: We might have that many on the St. Lawrence, yes, and the limit of the fines has been increased from $1,000 to $5,000, and we now get quite a few $5,000 fines. This bill will provide that the fine can go up to $100,000.

Senator Burchill: But I still make the point that there is nobody directly responsible in the area. The harbour master or the pilot master or anybody else could be made responsible, but nobody has the responsibility of communicating with the Department of Transport, if the captain does not.

Mr. Macgillivray: There is no duty laid on them, but we do encourage them to communicate. We encourage them and the R.C.M.P. and everybody with whom we come into contact to inform us immediately so that we can get there and investigate.

Senator Burchill: But there is no direct official.

Mr. Macgillivray: No, sir. I do not think we will be able to staff ourselves to have pollution control prevention officers.

Senator Burchill: But I thought it might be the duty of the harbour master.

Mr. Macgillivray: He could be designated a pollution prevention officer under this legislation.

The Acting Chairman: You mean under the regulations of this legislation?

Mr. Macgillivray: The bill provides for pollution prevention officers to be appointed, and any person can be appointed a pollution prevention officer with certain limited powers.

The Acting Chairman: Do you not think it would be a good idea to have every harbour master appointed? After all, they have a responsibility at each port.

Senator Burchill: These rivers are just a mess, are they not? Mr. Chairman, you know what is happening, and it is vitally important to protect the rivers. But I have seen oil drifting around in a river and nobody seems to know where the oil comes from or anything about it.

Senator Hollett: Mr. Macgillivray, on page 23 of the bill, clause 757(1)(b) provides:

> (b) in respect of each ton of oil shipped from any place in Canada in bulk as a cargo of a ship,

Suppose we substituted for the word "oil" the word "pollutant". It would then read:

> (b) in respect of each ton of pollutant shipped...

and so on, and then in every place where the word "oil" appears in that clause the word "pollutant" is be substituted for it, would that not be better than just having the word "oil" in there? That suggestion for amendment was made to me and I pass it on to you for your consideration as an expert.

Mr. Macgillivray: Such an amendment was moved in the House of Commons, sir.

Senator Hollett: Oh, was it? I did not know that.

Mr. Macgillivray: The committee of the other place considered such an amendment and, in lieu of the amendment, a paragraph (c) was added to clause 758 on page 25. And if you will look at page 25, line 8, you will see what the addition says.

Senator Langlois: Mr. Chairman, I would refer the members of the committee to the definition of "oil" in the interpretation clause of the bill on page 2, where it says in paragraph (h):

> (h) "oil" means oil of any kind or in any form and, without limiting the generality of the foregoing, includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil;

Mr. Macgillivray: When we first conceived the idea of a compensation fund we were thinking principally of oil, because so far as I am aware, in Canada at least, the only pollution that we know of that has been caused by ships has been by means of oil.

About 60 per cent of the ocean commerce now is oil cargoes, and I think the percentage is going up. Moreover, the likelihood of pollution danger from any source would indicate that it is most likely to be from oil, because quite apart from the tonnage that is carried as cargo, virtually every ship on the seas is now propelled by oil power by one means or another. So that this is the major part of the problem. It is the type of pollution that we do see from day to day and it is what people are suffering from.

Oil is an easily identifiable substance for which we can assess what will be the impact of a levy.

If we were to put in the word "pollutant" instead of the word "oil" and just say that this is on every ton of pollutant, then if we went back to the definition of "pollutant" you would find that you were covering practically every ton of every cargo that comes in. Because everything can be a pollutant. The cargo of sugar dumped into the Mississippi has killed the fish downstream by using up the oxygen. Virtually every cargo coming through our waters would be a pollutant, and you would have to try to determine an appropriate amount to be paid into the fund in respect of that cargo, bearing in mind the likelihood of that cargo's causing pollution damage.

We have not yet figured out a scheme on this. Instead of holding up the idea of a compensation fund or a claims fund, this amendment was made in the committee of the other place by adding paragraph (c) to section 785 on page 25, which allows the Governor in Council to bring such a régime into effect by regulation at such time as we are able to work out a scheme.

Senator Hollett: Thank you for your answer. I did not notice paragraph (c). When was that put into the bill?

Mr. Macgillivray: That was added by the committee of the other place when they reported the bill.

Senator Langlois: Referring to page 2, my interpretation is that the definition is broad enough to include even whisky imported from England.

Senator Hollett: That is poison, is it not?

The Acting Chairman: What about rum from Newfoundland?

Senator Langlois: Look at the definition of "pollution".

Senator Pearson: In the past an accusation was made by a member of the United States government that on the west coast we have no right to complain about oil shipments from Valdez, or possible shipments. At the present time there are going along the coast of British Columbia some of the oldest bottoms carrying oil. Is this right? Some of the oldest bottoms carrying oil are going along the Canadian coast, and we have never made any complaint about it. Have we no control over the oil cargo ships that come into port, or are anywhere near our coasts?

Mr. Macgillivray: Until this bill becomes law there is nothing in the Canada Shipping Act that allows us to tell a ship that it may not come into our ports or our waters, no matter how unsafe we may think it is. Two or three years ago a tanker caught fire in the Pacific; it was

abandoned by the crew and salvaged by a Pacific coast salvage company, who got lines aboard it and started towing for Victoria harbour. It was only after great persuasion that we arranged for them to tow it into a place up the coast, which was mutually agreed upon, which the fisheries people thought was safe enough, and there they transferred the cargo. There is nothing in the law authorizing any Canadian official to say a ship may not come in, and we are curing that in this bill.

Senator Pearson: Like these old ships on the Pacific now?

Mr. Macgillivray: Yes.

Senator Pearson: Thank you.

The Acting Chairman: May we now hear from Mr. Brisset. If there are any further questions we can come back later to Mr. Macgillivray.

Mr. Jean Brisset, Q.C. Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman, honourable senators, first of all I want to thank you for the privilege of appearing before you. I am authorized to speak to you on behalf of the London Group of Protection and Indemnity Associations. These associations cover or insure the legal liability of shipowners, more particularly for pollution damage or pollution claims. The members of these associations own approximately 170 million tons of the merchant fleets of the world, which is well over 80 per cent. They insure, in particular, practically all, if not all, the Canadian lake fleet, and the few foreign-going ships still flying the Canadian flag. As insurers, of course, they are principally, and I might even say only, interested in the liability aspects of this legislation, and my remarks will be confined to that.

Unfortunately, I was advised only yesterday of the hearings this morning and I have no prepared statement. I apologize if my statement to you is not as polished as it should be. However, I appeared before the committee of the other place and presented a written statement, of which I have copies, and also copies of the transcript. I am quite prepared to distribute these copies if members of the committee would like to have them.

The Acting Chairman: You may do so, certainly.

Mr. Brisset: Should I do it now?

The **Acting Chairman:** If there is no objection you may distribute them now, or later if you like.

Mr. Brisset: It may be of interest to honourable senators to have this statement now, because as an appendix I have reproduced the IMCO Brussels Convention, to which I will refer during the course of my remarks. This is the convention on civil liability for all pollution damage, which was drafted at an international diplomatic meeting in Brussels in November, 1969, which the Minister of Transport attended. I have French and English copies which I would like to distribute.

As I indicated earlier, there was an international conference in Brussels in November, 1969, when a draft convention was prepared on the issue of civil liability for pollution damage. The Minister of Transport was not satisfied with this convention, and informed those concerned that Canada would likely go it alone, which is what the Government did in introducing this legislation in the other place last fall.

However, there were lengthy hearings before the committee of the other place, in which most of those who appeared stated that it would perhaps be more advisable for the Canadian Government to work in co-operation with other maritime countries on the international level. Finally very important amendments were made in the bill as originally introduced, to incorporate in it many of the specific provisions of the IMCO Brussels convention that had been drafted in November, 1969.

When the bill had third reading the minister addressed the other place, and at this stage I should like to refer to one passage of his speech, because I find in it something that will support the suggestions I will be making to you. I am quoting from page 3853 of the House of Commons *Debates*, March 1, 1971, when the minister said:

> For obvious reasons I cannot give particulars, but I can assure the house of a definite movement toward more international co-operation. We have indicated our anxiety to go along with this by establishing bases in this bill which will put us on all fours with the Brussels convention. We are remaining within the international community rather than taking unilateral action. I do not suggest that it is possible or even likely that we will get everything we want within a year or two, but I have not the slightest doubt that the weight of public opinion is with us.

All I am going to say to you is that in the light of the already substantial amendments made to the original bill, all that is required to bring this bill more on all fours with the convention is a bit of tidying up, because there are some procedural aspects which should have been taken care of and which will not alter the substance of the present bill, but which we feel are necessary so that we may have a complete package.

I should like, as my first remark, and dealing with my first suggestion, to direct your attention to section 744(4) on page 14. This is an enactment of substance which states, and I quote:

> (4) Notwithstanding any other provision of this Act, the aggregate amount recoverable directly from
>
> (a) the owner of ship, or
>
> (b) the owner of a ship that carries a pollutant in bulk and the owner or owners of that pollutant, as the case may be, in respect of each separate incident that gives rise to civil liability under section 743 is,
>
> (c) where the incident occurs without actual fault or privity on the part of the person or persons described in paragraph (a) or (b)...

This is the owner of the ship or the owner of the cargo, and then the amounts are set out, 2,000 gold francs for each ton and 210,000,000 gold francs as a maximum.

These amounts are quite large; 210,000,000 gold francs is the equivalent of slightly more than $14 million. So you have an enactment which says that the liability of the owner is limited to these sums. But there is nothing in the act which provides for the situation where an accident occurs and the owner or the guarantor, the insurer, wants to invoke the privilege of limiting his liability and depositing, as is normally done in other circumstances, the amount of his liability in court and having the court distribute the amounts so deposited amongst all claimants in proportion to their claims.

Under the provisions of the Canada Shipping Act which also relate to limitations of liability in the case of an accident involving losses and damages other than pollution damage, a ship owner is entitled also to limit his liability, the limit is lower—as Mr. Macgillivray has explained it is about half—in fact it is exactly half of 2,000 gold francs being only 1,000 gold francs. But then Section 658 of the Canada Shipping Act as amended in 1961, Chapter 32, 9-10 Elizabeth II, reads as follows:

> 658. (1) Where any liability is alleged to have been incurred by the owner of a ship in respect of any loss of life or personal injury, any loss of or damage to property or any infringement of any right in respect of which his liability is limited by section 657...

This is the article which is similar to section 744(4) where it says:

> ...and several claims are made or apprehended in respect of that liability a judge of the Exchequer Court may, on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants; such judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

This is something we do and I have already done it twice this year in the case of a collision between two ships involving heavy damages. We went to the Court and said, "We acknowledge we are liable. This is the limit of our liability under the act. We are prepared to deposit this amount. Here it is." And we asked the Court to distribute it among all claimants in ratio to their claim. It is a simple procedure, and the Court has rules and regulations which set out how you must proceed. You must advertise in the papers and so forth. This is covered by the rules of Court.

Senator Hollett: They do that under that act, do they?

Mr. Brisset: Under the same act, the Shipping Act, but in the case of a pollution claim, there is nothing in the act which permits the same procedure to be followed. It could be done by reference; it could be done by inserting a similar provision in that particular part of the act. What would happen in the case of a pollution disaster? I am the ship owner; I am insured; I acknowledge that I am liable and I am liable, say, up to $14 million and there are a number of claims. I expect that the claims will exceed $14 million, so what am I going to do? I will be sued by hundreds of thousands of persons. Will the first to sue be paid first and then those who sue last have no money left? Some procedure has to be adopted in order to permit a reasonable and equitable way of disposing of the issue, in other words of the fund which the owner or the insurer is prepared to put up.

The Court, of course, would have to decide whether he is entitled first of all to limit, and what exactly is the amount of his limitation according to the Act depending on the tonnage of the ship. But these things are done all the time in Court.

So we say this is a lack in the present legislation which should be taken care of. If you refer to the text of the convention which is appended to our statement presented to the committee of the other place, there is a procedural provision to the effect that the owner in the case of disaster can apply to the Court, deposit his funds and the Court will then distribute it. So we submit that some similar provision either by way of reference or by inserting a provision somewhat similar to one I have read to you in this part of the Act would really complete the package.

The Acting Chairman: Mr. Brisset, do we understand that you have made similar representations to the other place when the committee there was sitting?

Mr. Brisset: Yes.

Senator Hollett: And nothing was done?

Mr. Brisset: Nothing.

Senator Hollett: It sounds reasonable.

Mr. Brisset: They did change the substance. They allowed, for instance, the number of defences open under the convention, but they did not deal at all, and I do not know why, with the procedural aspect of the problem.

Senator Pearson: There are funds deposited in Court and a number of claims are made against you. Now, let us suppose that the Court finds against you and the fund is not large enough to meet all those claims, what happens then?

Mr. Brisset: When we apply to the court for limitation of liability in an ordinary action, we have first of all to satisfy the court that we come within the terms of the statute and are entitled to limit liability. This is the first issue.

Once this is decided, the court will render a decree and say, "You, the owner, are entitled to a limit, upon deposit of the fund." It is at that stage that the fund is deposited. Before, only security was given to guarantee that the fund will be deposited once the decree is rendered.

These are procedural matters already taken care of by the rules of the court.

Senator Langlois: May I ask Mr. Macgillivray as to whether the Government took an official position in regard to the suggestion, before the other committee?

Mr. Macgillivray: I am afraid I would have to ask for some time to consult with the Department of Justice on this. I brought the...

Senator Langlois: Was an official position taken before the committee of the house?

Mr. Macgillivray: On this statement?

Senator Langlois: On the suggestion?

Mr. Macgillivray: No, sir.

Senator Langlois: My question was limited to that.

The Acting Chairman: It is ten minutes after 12. There are other witnesses who wish to appear, and in view of the length of the statements and as we do not wish to curtail them in any way, and in order to give a chance to honourable senators to ask proper questions, we will adjourn until Wednesday morning next at 10 o'clock.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HEDARD J. ROBICHAUD, *Acting Chairman*

No. 3

WEDNESDAY, MARCH 17, 1971

Second Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

(For list of witnesses and briefs submitted—see Minutes of Proceedings)

23616—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchill	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th, 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

23616—1½

Minutes of Proceedings

Wednesday, March 17th, 1971.
(3)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day, at 10.00 a.m., to further consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Robichaud (*Acting Chairman*), Bourget, Burchill, Denis, Flynn, Hayden, Hollett, Kinley, Langlois, McElman, McGrand, Michaud, Nichol, Peten, Rattenbury and Smith—(16).

Present but not of the Committee: Honourable Senator Macnaughton.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois, it was Resolved to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS:

Mr. Jean Brisset, Q.C., Advocate.

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgilligray, Director, Marine Regulations Branch.

PETROLEUM ASSOCIATION FOR CONSERVATION OF THE ENVIRONMENT—(IMPERIAL OIL)—

Mr. J. L. Lewtas, Q.C., Counsel.

TEXACO CANADA LIMITED:

Mr. A. Galipeault, Legal Counsel.

BP OIL LIMITED:

Mr. Jean Langelier, Q.C.

GULF OIL CANADA LIMITED:

Mr. J. C. Phillips, General Counsel

At 12.40 p.m. the Committee adjourned to the rise of the Senate this day.

At 4.05 p.m. the Committee met for further consideration of the said Bill.

Present: The Honourable Senators Robichaud (*Acting Chairman*), Blois, Bourget, Burchill, Flynn, Hollett, Kinley, Kinnear, Macdonald (*Cape Breton*), McElman, McGrand, Michaud, Pearson, Petten, Rattenbury, Smith—(16).

Present but not of the Committee: The Honourable Senator Inman.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

DOMINION MARINE ASSOCIATION:

Captain P. R. Hurcomb, General Manager.

CANADIAN CHAMBER OF SHIPPING:

Mr. J. J. Burke, General Manager.

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch.

The briefs listed hereunder were ordered to be printed as appendices to these proceedings.

Appendix "A": Proposed amendments submitted by the LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS.

Appendix "B": Brief submitted by Imperial Oil consisting of a document filed by PACE (PETROLEUM ASSOCIATION FOR THE CONSERVATION OF THE CANADIAN ENVIRONMENT) to a Special Committee of the House of Commons on Environmental Pollution, and proposed amendments to Bill C-2.

Appendix "C": Brief submitted by BP OIL LIMITED to which is attached a copy of the "CRISTAL" Fund.

Appendix "D": Brief submitted by GULF OIL CANADA LIMITED.

Appendix "E": Brief submitted by the CANADIAN CHAMBER OF SHIPPING.

Appendix "F": Brief submitted by the INTERNATIONAL CHAMBER OF SHIPPING without said Organization being heard.

At 5.40 p.m. the Committee adjourned for further consideration of the said Bill until Wednesday next, March 24th, at 10.00 a.m.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 17, 1971.

[*Text*]

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have a quorum, so we shall proceed, with our consideration of Bill C-2, to amend the Canada Shipping Act. Before we proceed I shall name those who are to appear before us as witnesses this morning. If we cannot complete our deliberations by 12.30 p.m. we might have to meet this afternoon, but this will be decided later this morning.

Appearing before us this morning is Mr. Jean Brisset, representing the London Group of Protection and Indemnity Associations, who commenced his presentation at the last meeting but was prevented from completing it by the adjournment. The second witness will be Mr. J. L. Lewtas, Legal Counsel, representing the Petroleum Association for Control of Environment, Imperial Oil. The third witness will be Mr. A. Galipeault, Legal Counsel, representing Texaco Canada Limited, of Montreal. The fourth witness will be Mr. Jean Langelier, representing BP Oil Limited, and he will likely be accompanied by Mr. R. B. Keefler. The fifth witness will be Captain P. R. Hurcomb, General Manager, Dominion Marine Association. The sixth witness will be Mr. J. J. Burke, General Manager, representing the Canadian Chamber of Shipping, Ottawa. And the last witness will be Mr. J. C. Phillips, General Counsel, Gulf Oil Canada Limited, of Toronto.

I shall now ask Mr. Brisset to come forward and proceed with his presentation.

Mr. Jean Briset, Q. C., Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman and honourable senators, if I may briefly summarize what I said at the last meeting, I pointed out that this legislation recognizes the right of the owner of a ship or the owner of a pollutant to limit liability, but that the legislation does not contain any provision indicating how such an owner can proceed to so limit his liability, and I recommended that there should be a provision in the bill, patterned on section 658 of the Canada Shipping Act, permitting an owner to apply to the court for a decree of limitation, and, if he is entitled to limit, to deposit the limited fund, the court then being authorized to distribute this fund pro rata amongst all the claimants.

As far as the excess of the claims that are not paid out of the fund is concerned, then they would be paid out either from the pollution fund created under this legislation, or they would be paid out of the voluntary fund created by the oil companies, or out of the international fund created under the Brussels Convention of 1969, when it comes into effect and if it is adhered to by Canada. I am advised that this additional fund is in the amount of $30 million.

I have taken it upon myself, with some diffidence, to prepare the text of the amendments which I would propose for your committee's consideration. I believe copies have been distributed this morning, both in French and in English.

First of all, I would like to direct your attention to the first amendment, which deals with the issue I have just raised. It could be done by adding the following subsection to section 744. (See Appendix "A")

Section 744 is the section which provides under subsection (4) for the limitation of liability and sets out what this limitation is.

Subsection (6), which I propose as an amendment, is patterned on article 658 of the Canada Shipping Act as amended by 9-10, Elizabeth II, chapter 32, section 33. It would read as follows:

> (6) Where any civil liability is alleged to have been incurred under section 743 by the person or persons described in paragraphs (a) or (b) of subsection (4) hereof . . .

That is, the owner of the ship or the owner of the pollutant . . .

> and where such liability is limited under paragraph (c) of said subsection (4) and several claims are made or apprehended in respect of that liability, a judge of the Federal Court may,. . .

I have changed the text here. The former text read "a judge of the Exchequer Court". We have now a Federal Court to replace the Exchequer Court.

> . . .a judge of the Federal Court may, on the application of that person or persons, determine the amount of his or their liability and distribute that amount rateably among the several claimants; such judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the person or persons described in

paragraphs (a) or (b) of subsection (4) hereof, and as to payment of any costs, as the court thinks just.

The court has adopted rules of practice which govern the method of proceedings, and these rules are applied currently in the courts now on actions in limitations of liability under the other part of the statute. I have added the following provision:

> In making a distribution under this subsection of the amount determined to be the liability of the person or persons described in paragraphs (a) or (b) of subsection (4) hereof, the court may, having regard to any claim that may subsequently be established before a court outside of Canada in respect of that liability, postpone the distribution of such part of the amount as it deems appropriate.

This is taken from an amendment to section 658 which was enacted by 13-14 Elizabeth II, chapter 39, section 34, subsection (2). This particular provision is, I submit, of importance and may be of at least some use in the case of an accident, or a discharge of pollutant, occurring in the contiguous waters of the United States and Canada—on the Great Lakes, for instance. The shipowner will under the comparable American legislation have put up security for the amount of his limit of liability, which, by the way, is about equal with the Canadian one, and if there are claims on both sides of the border, then the court will be empowered to postpone the distribution of the Canadian Fund until it is known about the distribution of the American claims and how much was involved there.

I say that I have prepared these amendments with some diffidence because I do not consider myself an expert in legislative drafting, and I am sure you have among your committee persons who are perhaps better qualified than I am. I do not pretend, either, that the text could not be improved; but I submit it to you with respect for your consideration.

Another amendment which I propose is based on article 5, paragraph 5, of the Brussels Convention, to which I have referred in the previous hearing. I pointed out to you that the Minister of Transport, when the bill came for third reading in the House of Commons, indicated that it was the intention of the Government to be on all fours with the convention as far at it was possible.

There is in the convention a disposition to the effect that, if the shipowner incurs expenses after the discharge of a pollutant, in order to clean up the mess, if I may use this expression, or if he pays claims of persons who have suffered losses or damages as a result of the discharge, the shipowner will be subrogated in the rights of that person and can claim, in his stead and place, against his own fund and participate in the distribution of that fund pro rata with all the other claimants.

In other words, the owner will not recover in full what he has dispersed, but he will share in his own fund along with all the other claimants who have not been paid.

The reason for this is to give an incentive to a shipowner or his insurer, after a discharge of pollutant from a ship, to take immediate action in order to remedy the situation as far as possible.

If the shipowner was not given this incentive and if he realized that his limit of liability would be reached in any event, if not successful in cleaning up, then I would say that he would be rather inclined not to take any action himself.

My friend Mr. Macgillivray was telling me of an accident that occurred recently on the coast of Gaspé; there was a discharge of pollutant, the owner of that pollutant took immediate steps to clean up, and the clean-up was completed even before the report of the discharge reached Ottawa.

So I repeat that there should be for the owner an incentive to take action himself.

Again I have drafted an amendment to cover this point, which follows very closely the wording of the paragraph of the convention which I have mentioned earlier, namely, article 5, paragraph 5.

By the way, the convention is reproduced in the statement, or is appended to the statement which I delivered before the committee of the other place, and it was distributed at the last hearing.

The amendment would be paragraph (7) to be added to section 744, and it would read as follows, and I quote:

> (7) If before the Fund is distributed the person or persons described in paragraphs (a) or (b) of subsection (4) hereof or any of their servants or agents or any person or persons providing them insurance or other evidence of financial responsibility have as a result of a discharge of pollutant in waters to which this part applies paid compensation for actual loss or damage incurred by those referred to in paragraph (d) of subsection (1) of section 743, such person or persons shall, up to the amount they have paid, acquire by subrogation the rights which those so compensated would have enjoyed under section 743; claims in respect of costs and expenses reasonably incurred or sacrifices reasonably made by the person or persons referred to in paragraphs (a) or (b) of subsection (4) hereof voluntarily to prevent or minimize pollution damage shall, if they were incidental to the taking of any action authorized by the Governor in Council under section 743, rank equally with other claims against the Fund.

I have had occasion to discuss this particular issue with Mr. Macgillivray and he mentioned to me that this was in fact the intention of the bill and he referred me to section 743, subsection (1), paragraph (c). That reads as follows:

> Where the person or persons described in paragraphs (a) or (b) of subsection (4) hereof after the discharge of a pollutant in waters to which this part applies...

In other words, the owner would be responsible for the costs and expenses incurred by anybody, provided it is authorized by the Governor in Council. However, with all due respect I fail to see that this would cover expenses incurred by the owner himself. I realize it would cover expenses incurred by third parties, but I submit to you it is not really clear that it would even cover the owner so as to enable him to make a claim against himself or

against his own fund. This was realized at the time the Convention was drafted in 1969, and I might say that practically all of the maritime countries of the world were represented and the best legal brains were there and it was thought necessary to add a specific provision to that effect.

The next amendment which I would commend again as a subsection to section 744 is to be found on page 2 and it would be subsection (8). It is again patterned on the similar provision contained in the Convention where it is Article 6, paragraph (1). It reads as follows:

> (8) Where the person or persons described in paragraphs (a) or (b) of subsection (4) hereof...

That is the owner of the ship or the owner of the pollutant discharged from the ship...

> ...after the discharge of a pollutant in waters to which this part applies, have constituted a Fund in accordance with subsection (6) hereof and are entitled to limit their liability,
>
> (a) no one having a claim under paragraph (c) or (d) of subsection (1) of section 743 arising out of the discharge of a pollutant in waters to which this Part applies shall be entitled to exercise any right against any other asset of that person or persons in respect of such claim.

In other words, the owner has acknowledged his liability and he has paid into Court the fund making up his limit of liability and we say that in these circumstances it is reasonable and equitable that his other assets should not be subject to arrest. It is, if I may use the expression I used at the previous hearing, a tidying up of the legislation as it is now.

Paragraph (b) is of course a corollary and follows naturally from that. It says:

> (b) the Court shall order the release of any ship or other property belonging to that person or persons which has been arrested in respect of a claim for their costs and expenses and the actual loss or damage referred to in section 743 arising out of that incident and shall similarly release any bail or other security furnished to avoid such arrest.

After an accident a ship may very well be arrested to secure the claims of those who have claims, but once the owner has deposited his fund and been found entitled to limit liability, the Court should permit the release of the ship. Again this is purely a procedural matter which when the Convention was drafted was thought to be one that should be specifically provided for.

I now come to another amendment which is of extreme importance particularly for the associations which I represent here before you now namely the protection of indemnity associations which insure that liability of the ship owner for pollution damage. These associations, as I have stated earlier, are for all practical purposes the only insurers in the world that insure such liabilities. As you well know, Canada is entirely dependent on foreign shipping for the movement of its imports and exports, and the foreign ships coming here in most cases will have no assets in Canada, and in order to satisfy the requirement of this Act as to financial responsibility will provide a certificate of insurance which in turn will be a certificate of insurance issued by the PNI Associations. Now in fact it will be these insurers who will pay the claims; it will be these insurers who will put up the amount of the limitation fund of the owner, and therefore we consider it extremely important, or these insurers consider it extremely important, that they should be given the privilege of applying for limitation of liability and depositing themselves the amount of that limited liability. In doing so they will be relieved of any further liability whether or not the owner of the ship can limit his own liability. In other words, and I think this is contemplated under the Act, all that is required from the insurer or the guarantor is to provide a guarantee for the amount of the limited liability of the owner of the ship, and that is all that the guarantor or the insurer can be called upon to pay. Therefore, as was done at the Brussels Convention, we submit that the insurer should be given the privilege of doing directly all the owner can do himself, that is go to the Court and say "I am prepared to deposit the limited fund; here it is; will you distribute this fund amongst all claimants?"

As you know, under section 745 of the Act, the insurer can be sued directly by the claimant under the guarantee which he has given, and it seems logical that if he can be sued directly, he should also be allowed to raise the same defences that the owner would have raised if he had been sued himself, namely the defences which by the amendment brought in by the House of Commons was inserted in section 744, namely, an act of war, civil war, insurrection, act of God, that is a natural phenomenon of an exceptional inevitable and irresistible character, an act or omission done with intent to cause damage, by a person other than any person for whose wrongful act or omission the owner is by law responsible, the negligence or wrongful act or omission by any person or government in the installation or maintenance of lights or other navigational aids.

Briefly the guarantor should not be in a worse position than the person he guarantees, and that is the purpose of the amendment which I propose should be added to section 745 at the end of subsection (2). It is patterned on Article 7, paragraph 8 of the Convention and it would read:

> In such case the defendant...

That is the insurer or the guarantor.

> ...may, irrespective of the actual fault or privity of the owner of the ship or of the owner of the pollutant as described in paragraphs (a) or (b) of subsection 1 hereof avail himself of the limits of liability prescribed in subsection (4) of Section 744. He may further avail himself of the defences which the owner of the ship or the owner of the pollutant would have been entitled to invoke under subsection (1) of section 744. Furthermore, the defendant may avail himself of the defences that the pollution damage resulted from wilful misconduct of the owner of the ship himself or the owner of the pollutant, but the defendant shall not avail himself of any other defences which he might have been entitled to

invoke in proceedings brought by the owner of the ship or the owner of the pollutant against him.

I have explained in the committee of the other place that the only defence open to the insurer under this provision would be, for instance, the scuttling of his ship by the owner:

> The defendant shall, in any event, have the right to require the owner of the ship or the owner of the pollutant or both as the case may be to be joined in the proceedings.

In other words, even though the insurer may limit his liability and simply pay the amount which he has put up as guarantee, this will not prevent the claimants from pursuing their remedies against the owner himself if the owner is not entitled to limit liability.

Senator Rattenbury: In a separate action?

Mr. Brisset: In a separate action—or simply recover from the fund created under this act, which we call the pollution fund or the voluntary fund, established by the oil companies under the organization known as Crystal, or under the international fund to be created under the convention to which I have referred earlier.

Senator Langlois: But if the owner of the ship or the owner of the pollutant are joined, it would be the same action?

Mr. Brisset: It would be the same action, but the guarantor or the insurer will be freed upon payment of the amount of his limited liability.

I should like to draw the attention of honourable senators to a problem which may arise here. There is similar legislation in the United States, and the owner of the ship has to put up security with the government or the federal Maritime Commission up to the amount of his limited liability. This is done in most cases, as it will be done in Canada, by means of a certificate of insurance provided by the P and I Association underwriters. Arrangements have been concluded between the London group of P and I Association on the text of this certificate, which is now accepted.

It is the practice in the United States, when an owner operates a large fleet, for the Maritime Commission to accept a certificate in the amount corresponding to the limited liability of the largest ship of the fleet. If the same practice were followed here and it were a smaller ship that was involved in the casualty it would be improper, I submit, to have the guarantor responsible for an amount in excess of the limited liability of the smaller ship simply because he has put up a guarantee based on the limited liability of the largest ship of the fleet.

However, these problems will most likely be dealt with when the regulations are passed and the practical aspects of the whole thing are reviewed and discussed.

The next amendment is subsection 3 to be added to section 745. It is based on article 5 of paragraph 11 of the convention:

> The insurer or other person providing evidence of financial security shall be entitled to constitute a fund in accordance with subsection 6 of section 744 on the same conditions and having the same effect as if it were constituted by the person or persons referred to therein. Such a fund may be constituted even in the event of the actual fault or privity of that person or persons but its constitution shall in that case not prejudice the rights of any claimant against that person or persons.

I have already dealt with this. Although I have not submitted these proposed amendments to the department concerned—I must say they were prepared in a hurry—I have had occasion to discuss very informally what I was going to propose with Mr. Macgillivray. Mr. Macgillivray has had considerable experience in these matters. He has attended many international meetings, and I hope I will not offend him if I say that if I press him hard enough I think he will concede that some of these amendments should really be incorporated in the legislation to tidy it up.

Senator Burchill: Were they presented to the committee in the other place?

Mr. Brisset: The principles were submitted to the committee of the other place, but the amendments had not been drafted as I have done now. The principle was expounded. However, I realize that, from a maritime legal aspect, they are a little technical. Anyway, they were not acted upon. Only amendments of substance were made to the act by the committee of the other place.

Senator Hollett: Whta do you mean by "a maritime legal aspect"?

Mr. Brisset: What I have in mind is that action and limitation are peculiar to maritime law. You will not find any action of this kind in the civil law or the common law. It is entirely peculiar to maritime law.

The Acting Chairman: Before we proceed with questioning, it might be preferable to have comments from Mr. Macgillivray who is Director of the Marine Regulations Branch of the Department of Transport.

Mr. Brisset: There is one further remark that I should like to make. It involves a problem to which unfortunately I cannot offer any solution at this stage. I have dealt with this matter in the committee of the other place. I stated then that one of the matters which needs elaboration is the possibility of a discharge of pollutants in the international waters of the Great Lake on the east and west coast of Canada, when such discharge pollutes the waters of the shores of both Canada and the United States.

At the moment there is no reciprocal provision in the present legislation to take care of such a situation, and we submit there should be arrangements between the two governments to ensure that one single fund will be available to claimants on both sides of the border; otherwise two funds would have to be created of the same magnitude simply because the accident occurred in these waters rather than, say, in the lower St. Lawrence.

It should not be forgotten that insurance market capabilities are limited. They are limited to a sum of $14

million, and if the insurers were to put up a guarantee in the United States up to that limit and if they were to put up a similar guarantee in Canada you will readily see that they could be liable for twice the limit of their coverage. In fact, the United States has pre-empted the field. They now demand certificates of insurance from all ships going to US ports and the insurers do not feel that they could not accommodate ships of their members proceeding to Canada by providing this certificate if they have already provided one to the US Government. Otherwise they would be engaging their liability for twice the amount of their coverage. Therefore, it is of extreme importance that some arrangements be concluded between the two governments in order to ensure that Canada's needs can be accommodated by the insurers who insure this type of liability and who will provide the certificate of insurance required under the legislation.

I must say that underwriters are quite concerned in this regard. I again received a Telex the day before yesterday from the London group, pointing out this very difficulty and asking me to acquaint your committee with the problem. If action can be taken it should be taken in the very near future. This would prevent a situation such as would develop if foreign ships going to US ports through the international waters after calling here find themselves unable to obtain accommodation from their insurers to meet the requirements of this legislation.

I would be very pleased to answer questions, Mr. Chairman.

The Acting Chairman: Thank you, Mr. Brisset. I think Senator Langlois has a question.

Senator Langlois: Mr. Chairman, it is not a question to Mr. Brisset; I just wish to point out that since Mr. Brisset's amendments are based on the 1969 convention, when Mr. Macgillivray comments he should inform the committee of the participation taken by Canada in the international convention. Is Canada committed to it to some degree? What will be the official position of the Government with respect to these two very important amendments?

Senator Rattenbury: In view of Mr. Brisset's closing statement I would like a little amplification. Do P and I have a blacklist, or a list of ships they would insure? Would they possibly apply an increased premium?

Mr. Brisset: Yes, that will happen in some cases. Based on the experience of a shipowner, special terms will be imposed which may involve a higher premium.

Senator Rattenbury: But in view of your statement that you are the only insurers in the world covering this particular type of accident or tragedy, are there any shipowners that you refuse to insure?

Mr. Brisset: I am afraid I am not in a position to answer this question. I doubt that it would be so if the ship has passed the required inspections by the classifications society or the Government inspections such as steamship inspection in Canada. This is provided, of course, that the owner pays his premium; if he does not, he will not be insured. I do not need to mention this, of course.

Senator Flynn: Does Mr. Brisset suggest that the insurers may not be prepared to cover the liability as it is described in the act?

Mr. Brisset: They would not be prepared to provide the certificate of insurance to meet the requirements of this legislation if they have provided one to the US Government. In the case of a large ship with a limit of liability of $14 million, they will have provided a certificate of insurance to the US Government, under which they will be directly liable up to $14 million and that is the limit of their coverage.

Senator Flynn: They would not go further at this time?

Mr. Brisset: No; this problem is taken care of under the Brussels convention, which provides that the insurer will issue only one certificate, or one guarantee. This will be available in all the countries which have subscribed to the convention.

Senator Langlois: Mr. Chairman, this brings to mind another point which I would like Mr. Macgillivray to speak to when he comments on these amendments. Has Canada sought any reciprocity with the United States on the basis of the suggestion made by Mr. Brisset?

In other words, if we enact the provision that our courts should have regard to claims made outside Canada in limiting the liability of a shipowner or the owner of a pollutant, we should have legislation to cover the case of other countries concerned, such as the United States in the example given by Mr. Brisset of a pollutant being spread in the Great Lakes area.

I would like to know if the Canadian Government has already approached Washington on this matter?

The Acting Chairman: As Mr. Brisset has suggested a number of rather long and important amendments, we may at this stage hear from Mr. Macgillivray, who in his reply may also take into consideration the points raised by Senator Langlois.

Senator Flynn: It may be better to enquire if other witnesses wish to support the views expressed by Mr. Brisset before we proceed.

Senator Langlois: I know that Mr. Macgillivray is always ready to answer such questions and I think in all fairness we should give him a chance to take over.

The Acting Chairman: In that case we should hear from other witnesses and then proceed with the questioning.

Senator Kinley: Mr. Chairman, may I ask a question of Mr. Macgililvray? Is the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, in force?

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Yes sir.

Senator Kinley: That refers mostly to our inland fisheries, oil tankers not being included. Is it not true that they are exceptions to the convention?

Mr. Macgillivray: No, sir.

Senator Kinley: Well, I have it here; Article IV provides:

> Article III shall not apply to:
>
> (a) the discharge of oil or of oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship, preventing damage to a ship or cargo, or saving life at sea;
>
> (b) the escape of oil or of oily mixture resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape.

That is excepted.

Mr. Macgillivray: No; the convention has been amended twice since 1954. We are in the position now that with the latest amendment every discharge of oil of any sort from a ship will be prohibited, excepting the provision for saving life at sea.

Senator Kinley: Is that an amendment to the convention?

Mr. Macgillivray: Yes, sir; there have been two amendments.

Senator Kinley: Someone in the House of Commons said that it is limited to 12 miles; we have 100 miles under that convention.

Mr. Macgillivray: Yes, it applies to Canadian ships all over the world, but we can only enforce it within 12 miles. When an offence takes place outside the territorial sea it is up to the country of registry to handle the prosecution.

Senator Kinley: Now we have a very small merchant marine. I think this gentleman said that all the insurance was co-insured, that is, was carried in London or France. I think he said there is no company in the United States and no company here—and that is my experience—which will carry these loads, is that true?

Mr. Macgillivray: I agree with Mr. Brisset, that the insured liability of this type is unobtainable practically for many organizations excepting the Protection and Indemnity Association that he speaks of.

Senator Kinley: Are there companies such as Lloyds which have any special provision in the laws of Canada?

Mr. Macgillivray: I do not think so, senator.

Senator Kinley: Are you sure?

Mr. Macgillivray: Perhaps that would be a question you could address better to Mr. Brisset. He is more familiar with it.

Mr. Brisset: If I may answer that question, the P and I associations, the London groups and others, have re-insurance arrangements on a worldwide basis, including Lloyds, and insurers in all countries of the world—France, Gemany, the United States, Canada and so forth. In their re-insurance contract, they try to obtain the maximum on a worldwide basis, but there is a limit to what the re-insurers will take, and then the excess comes back to the P and I associations.

Senator Kinley: Have they a monopoly in Canada, with no competition?

Mr. Brisset: I do not know whether you should call it a monopoly. They are the only ones offering the kind of service that the shipowners require. There is no one else who offers the service which the P and I associations offer to shipowners. They have correspondents, experts, in all parts of the world, to represent them and to assist shipowners. This is the only organization that exists with similar services. Nobody has been able to offer the same type of services.

Senator Kinley: It seems to be that they do so well that they carry on with very little interference.

Mr. Brisset: It should not be forgotten that they operate on a mutual basis.

Senator Kinley: Yes.

Mr. Brisset: It is in fact all the shipowners of the world who come together in order to insure themselves on a mutual basis.

Senator Kinley: They seem to be very slow in their payments and the matter of interest becomes important. It seems to me that they should be more prompt in their payments.

Mr. Brisset: With all respect, I have to differ from you, having handled so many claims throughout the year. I can assure you there is no problem. The Bank of England seems to be most anxious to provide the money, even though it is dollars, when it comes to paying claims arising out of marine casualties. On the contrary, I have found it very prompt.

Senator Kinley: Has there been any change so far as the inland waters are concerned, from this convention—regardig motorboats, and that sort of thing, vessels of a certain tonnage, captaincy and pilots? Is that all the same?

Mr. Macgillivray: There is no real change, senator. At the present time and until we adopt the most recent amendments to the convention, there has been an allowance for some minimal discharges from ships.

Senator Kinley: Yes.

Mr. Macgillivray: But under the new regime no discharges will be permitted.

Senator Langlois: Mr. Chairman, mine was not a question. I just wanted to remind Mr. Brisset that in order to give a complete reply about the monopoly of the P and I insurance coverage, he should insist on the mutual character of this insurance as protection indemnity insurance; and he has done so. Therefore, I have no questions to put to him.

The Acting Chairman: Thank you, Mr. Brisset.

Honourable senators, we should hear now from Mr. Lewtas, who is legal counsel representing Petroleum Association for Conservation of Environment—Imperial Oil.

Mr. Lewtas has suggested distribution of copies of the brief of the Petroleum Association for Conservation of Environment. I do not believe we have enough copies for all members.

Mr. J. L. Lewtas, Q.C., Counsel, Petroleum Association for Conservation of Environment—Imperial Oil: Mr. Chairman and honourable senators, I should clarify at the outset that I am officially appearing here for Imperial Oil Limited only. I did appear before the committee of the other place for the Petroleum Association for the Conservation of Environment, which goes by the short title of PACE, which is an association that members of the major Canadian petroleum companies formed for the purpose of dealing with environmental problems common to the industry. The reason why I officially appear for Imperial Oil Limited is that PACE, like all associations of that nature, I suppose, was just not flexible enough to keep up with the very rapid timetable of this bill...

Senator Flynn: To keep pace.

Mr. Lewtas: That is right. They have been unable to convene the necessary meetings and so on to form a united presentation.

The blue cover which has been distributed to honourable senators is a copy of the brief which was presented to the other place, in which we presented our views on the bill. Members of the committee will be gratified to learn that I have no intention of going through that again. It is put before you merely for the convenience and information, at the request of the president of PAGE.

In fact, instead of going into a comprehensive review of the bill itself and our attitude toward it, I intend to deal only with two provisions, where it seems to us the bill urgently requires amendment in order to give effect to its proper intent.

In order to make understandable, however, what I have to say today, it will be necessary, in the first place, to go somewhat into the background of the bill and of the attitude which Imperial Oil Limited and other oil companies have formed toward it.

I should say that the members of PACE did not manifest an attitude of implacable opposition to the bill, when they appeared before the other committee. Each of these companies have long been aware of the importance of pollution control as an element for the cost of their doing business. They recognize that the problem which this bill is seeking to solve is a problem with pollution, and they recognize that they should bear their fair share of the responsibility, in bearing the cost of it.

Another preliminary remark I should make is that although oil companies, by their very nature, tend to be associated with the shipping industry in many characteristics and aspects, they appear before this committee in one capacity only—as owners of cargo carried in ships owned and operated by other persons.

That does not make any less important what the oil companies have had to say on this bill, because it is precisely in those provisions of the bill which affect cargo owners that this bill is the most radical and trailblazing of its type. For this is the first bill that has made a cargo owner liable for damages to third parties.

Mr. Chairman, I should like to emphasize just how radical a concept this is. Historically, as you all know, if you wanted goods moved from point A to point B you gave them to a railroad or a trucker or an airline or a ship and you paid the freight and from then on it was the carrier's responsibility. If there were any damages caused to any parties in the course of the transit, that was his business, and, of course, that makes sense because he is in that business; he has complete control over the voyage or the trip. At the moment that you delivered your goods to him you surrendered control over the goods and over the trip.

Then, of course, what he does is to insure his risk and he includes the cost of insurance in the freight or hire which he charges you. All these many years that has been the system and it has worked well.

This bill would now change all that in the case of pollution damage caused by ships in Canadian waters. For the first time not only the shipowner but also the cargo owner is responsible.

Mr. Chairman, we do not even object to the principle of responsibility on the part of cargo owners. Again, this is a pollution problem and we recognize a degree of responsibility. However, in determining how the responsibility of the oil companies should be enforced, it is necessary for us to look critically at the applicable provisions of this bill. I am going to confine myself largely to sections 744 and 745, and I think it would be useful and even necessary in order to understand our problem if I were to summarize what the bill says about the liability of cargo owners.

In favour of persons who have been damaged by this type of pollution, then, the bill creates two levels of liability. On the first level it says that the shipowner and the cargo owner will be absolutely liable for the damages and that they will be liable jointly and severally. Still on that first level of liability, however, the bill imposes a ceiling on liability and in doing so invokes the traditional rule of maritime or marine law that a shipowner can limit his liability under certain circumstances. So the practical effect is that at that first level of liability, where the cargo owner and the shipowner are jointly and severally and absolutely liable, the maximum liability is $134 per ton of the ship's tonnage or a maximum of $14 million. Again at that first level of liability, in order to ensure that any amount payable will in fact be paid, the bill very properly requires the owner of a ship coming into Canadian waters, and the owner of any polluting cargo on a ship coming into Canadian waters, to post adequate proof of financial responsibility with the appropriate authorities.

That then is the first level of responsibility.

The bill goes further in that it imposes a second level of liability, the so-called maritime pollution claims fund which is maintained by contributions by the owners of cargoes coming into Canadian ports. That fund is available to make up all damages which are suffered and which, for one reason or another, cannot be paid at the first level of liability.

So that is the scheme of the bill. Mr. Chairman, it is a comprehensive scheme and should offer all the protection that people require in this regard.

Before the committee in the other place our objection to the bill was that our contribution, the contribution of the cargo owners, could be enforced just as effectively and far more equitably if the first level of liability were abandoned and our entire responsibility was taken, and our entire contribution to these damages was made, at the second level or out of the maritime pollution claims fund.

We gave a number of reasons before the committee of the other house for this position, but two of them are, I think, by far the most important and are sufficient to illustrate our position. The first of these was that the first level of liability, where we are jointly and severally liable with the shipowner on an absolute basis, is simply unnecessary for the protection of the public. Under the act the ship must insure against this loss. It must provide proof of that insurance before it is allowed to come into Canadian waters, and, therefore, up to the limits of the liability the insurer of the shipowner is going to pay all damages. If there is further damage beyond that first level, recourse can be had to the maritime pollution claims fund.

Our point here is to add the owner of the cargo as a person liable adds not one cent to the protection offered the public. So that is why we say that adding the cargo owner at that level is simply unnecessary.

Secondly, we believe that it is wrong in principle. The reason for that is that if cargo owners for the first time in history and without their fault are to become liable for these damages, then common sense indicates that they should be liable on the basis of a measurable cost of doing business. That is, the contributions of each of them should be made on a sensible apportioned basis such as their contributions proposed to be made under the Fund. To the extent that they are bringing cargo of this type into Canada, they should be assessed for them and make appropriate contributions to the Fund. Then their contribution, which is going to be reflected some day in the cost of petroleum products to the consumers in Canada, will be on a business-like basis, whereas, if we keep them liable on the first level of liability, their damages will not depend on the volume of their Canadian business. Their damages will depend on the accident or coincidence that on a particular day, when the waves were "that high" and the fog was "that bad", their particular cargo happened to be carried on a particular ship. We say that that is wrong in principle and is unbusinesslike.

Mr. Chairman, those were our two principal objections before the committee of the other place, and they will be reflected in our brief in the blue cover, if anybody is curious.

Those objections were to the effect that although we recognized our responsibility, it was far better that our responsibility be implement through the Fund and through the Fund alone. The other place did not accept that argument. When we asked why they did not, only one rejoinder was made to us, and that was to the effect that apparently there was some thought that, if the cargo owner was made jointly and severally liable at that first level of liability, he would in some indefinable way be more careful in selecting the ships which he chartered, and thus the public interest, this argument goes, would be served to the extent that a higher calibre of vessels would be plying our waters.

I shall not go into detail on our comments on that. Suffice it to say that that ignores the practicalities of the world chartering market. It just simply does not work that way. However, as I said at the outset, we are not here to re-argue our entire case made before the other committee. We have two points in respect of which, in order properly and fairly to implement the bill as it has been adopted, this present bill should be further changed.

The material in front of you includes a brief memorandum which we have prepared. It certainly does not purport to be a brief or a submission; it is merely and aide memoire, and to it I have appended the two proposed amendments which I shall be putting before you, and it is with at least as much diffidence as Mr. Brisset that I give you the text of these amendments. I do not put them forward with the suggestion that they should be incorporated verbatim in the statute, but merely to show how we are thinking and what the thrust of our amendments would be.

Mr. Chairman, I would request and in order to save the time of the committee by reading these into the record that you would arrange to have them printed as part of the record of these proceedings?

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Lewtas: The first of the specific recommendations, then, Mr. Chairman is that a cargo owner who is required to pay damages for this type of pollution should have a right to reimbursement from the owner of the ship which carried that cargo. Now I have had discussions on this point with Mr. Macgillivray, and he, of course, is here to speak for himself, but he left me with the definite impression that he believed that the true intent of the bill as it left the other place was in fact to preserve that write-over of the cargo owner against the ship owner. The unfortunate part about it is that the words of the statute which purport to do that are, I believe, clearly inadequate. Those words appear at the bottom of page 13 of the bill and they are the last five lines of subsection (1) of section 744. They say:

> and nothing in this Part shall be construed as limiting or restricting any right of recourse that a person liable pursuant to section 743 may have against any other person.

The problem there is that a cargo owner does not have a right against a ship owner for recovery of this type of liability, and therefore if the cargo owner is to have it, he should be given it specifically. The first amendment which I have included as Schedule A in the aide memoire which I have left before you purports to give effect to that right of recovery over.

Senator Burchill: Pardon me, would not his contract or his charter party cover that point?

Mr. Lewtas: Actually charter parties cover that exactly the other way round. I should like to deal with that later, if I may, because I think it comes better into context later.

Dealing with the proposed right of recovery then, Mr. Chairman, I should like to make the following remarks; first, as I have said, the cargo owner has been left at this first level of liability in order to protect the public only, that is by making the cargo owner more careful in selecting his ship. And perhaps, if you will, to make it easier for the public to enforce any damages which they might suffer. However, once the cargo owner has made the payment to a member of the public who has been damaged, the intention of this bill is satisfied. Then we are back to the relationships as between the owner of the cargo and the owner of the ship, and as I said at the outset, the traditional and historical relatonship between the two is the sensible one that once the cargo owner delivers the cargo to the carrier of it, that should be the end of his responsibility for that trip over which he has no further control.

The right of recovery which we are talking about should, on this reasoning, be a right of recovery which is entirely independent of whether the ship owner was at fault in causing the accident or whether he is liable only because of the absolute liability imposed by the bill. The reason for this is that having satisfied the intent of the bill by protecting the public, then once more there is no reason at all why a passive cargo owner should have any responsibility for a voyage. And this does not effect, Mr. Chairman, the economics of the carriage. Once again the ship owner is insured against this very thing. The proof of that is that the statute requires him to put up a certificate of insurance and the cost of that insurance is included in the hire which he charges us. In fact if it were the other way around, and if our right of recovery were dependent on our proving that he was negligent, then it would be necessary for the cargo owners to put their own insurance on this risk, and we really cannot see that that helps anybody, because it is the same risk and all we would be doing would be to insure it twice and at the expense of the users of petroleum products in Canada we would be enriching the insurance industry. That is the reason why we seriously ask that this right of recovery be not only spelled out but that it should be one that is automatically over against the ship owner.

To return to the point you mentioned, Mr. Senator, there must be a provision in any such write-over which overrides existing charters. The oil companies in a great many instances are operating ships under long-term charters. Those charters were all entered into without regard for the likelihood that legislation of this radical nature would be enacted. They therefore contain broad exculpatory provisions whereby the owner of a cargo in effect abandons practically every cause of action that he would have against the owner of the ship and it would be impossible, of course, to renegotiate these charters and some might go on for 10 or 15 years. Therefore we are asking that this specific provision which gives us a right of recovery against the ship owner in effect override the provisions in existing charters.

So, in conclusion on my first point, Mr. Chairman, we ask that specific right of recovery be given to cargo owners by a new subsection (6) of section 744 the suggested text of which we have given you. We ask that this right of recovery be independent of any fault on the part of the ship or the ship owner, and we ask that it be specifically expressed to override existing charters and other contracts between cargo owners and ship owners.

That leads me to the second of my two specific proposals in connection with the bill, and that relates to subsection (4) of section 744 where the limitation of liability concept is contained. Now, as you know, and as Mr. Brisset has already said this morning, this is a concept peculiar to admiralty law. This is not the same principle as a master being responsible for the acts of a servant; it is a unique principle where they say in effect that if there had been no actual fault or privity on the part of the owner of a ship to any accident, then his maximum liability for such accident will not go beyond certain stated limits. Now the words "actual fault or privity" have been spelled out in many admiralty cases and they can be summarized as indicating that the limits of liability can be invoked where there has been no personal blameworthiness on the part of the owner of the ship itself.

You can, for example, have negligence on the part of the master, but if there is nothing in the conduct or knowledge of the owner which would have led him to suspect such negligence would have happened, then he can invoke his limits of liability. The bill here extends this ancient principle to the new absolute liability which the bill imposes.

Our submission is that as presently drafted this bill has the simply outrageous effect that the liability of the cargo owner depends on the shipowner's ability to limit his liability. So it will depend on the personal conduct of certain individuals, whom he almost never knows and over whose conduct the cargo owner certainly never any control. For example, if oil spills out of a 50,000-ton tanker the normal limit of liability would be something like $6½ million. That tanker nowadays is going to be owned by a corporation, and if any directors of that corporation or any responsible officers or employees of it have some secret, guilty knowledge that, for example, the master was fond of getting drunk every now and again, or some piece of equipment had a latent defect that the person decided was too expensive to fix, and if, as a result, a disaster occurs, then the liability of the cargo owner becomes unlimited. This would be enough to court bankruptcy for some oil companies. This would result, even though the cargo owner had not known and had no

way of knowing who all these directors, officers or employees were, or what information they had, and notwithstanding this guilty information of theirs might have been obtained by them long after the charter had been entered into and, therefore, long after the cargo owner had any contractual right whatsoever to withdraw from his contract.

Senator Rattenbury: To expand that a little further, would you include the real owner of a ship, such as the insurance company or whoever it might be, as opposed to the operator of the ship?

Mr. Lewtas: Well, I prefer, senator, to deal with this on the basis that we are dealing with the primary parties: firstly, the owner of a ship; secondly, the owner of the cargo; and...

Senator Rattenbury: But in many cases there are three parties.

Mr. Lewtas: I was just going on to explain that, sir. We appreciate that the economics of it are such that insurers are very prominent participants indeed in a Maritime venture, but we think that if we sort out the primary liabilities of the parties, then the liability of the insurance company to indemnify those parties will follow. And if we sort out the original primary liabilities the proper way, then the insurance company is left with a proper indemnification obligation.

Senator McElman: You referred to a 50,000-ton bottom and $6½ million related damage.

Mr. Lewtas: That is right.

Senator McElman: Would that go up correspondingly? Would it follow that a 200,000-tonner, which is the thing of today, goes to $26 million?

Mr. Lewtas: It does not, because the overall aggregrate is placed at $14 million. But you are quite right, that up to the point where you reach that $14 million, it goes up, because it is a per ton figure.

To conclude, the present provision, as we see it, is just plain injustice. Again, it is completely unnecessary to implement the bill's purpose, for we have established that this amount will be paid up to the limitation of liability by the insurer of the ship, and any additional amounts that have to be paid will be payable out of the pollution claims fund, which is the source which the oil companies claim is the most equitable and most effective way to make their contribution to this very pressing problem.

So, in conclusion, I have placed before you a proposed amendment of subsection (4) of section 744 which would permit an innocent party, a party on whose part there has been no actual fault or privity, to limit his liability in the appropriate manner.

To summarize our submissions this morning, Mr. Chairman, we accept, as I have said, the principle of responsibility. We point out that in a private enterprise, co-operative economy, such as ours, any added costs inevitably become part of our price structure, and we have a product that is used very generally by the people of Canada. So we wish the bill to achieve its legitimate ends without imposing unnecessary, wastefully duplicated costs in carrying on our business. We think the Maritime Pollution Claims Fund is the best way of achieving this. If, however, we are to continue to be liable at the so-called first level of liability, then we respectfully submit that our two suggested changes are necessary to avoid useless additional costs and a large degree of unfairness in this bill.

The Acting Chairman: Thank you, Mr. Lewtas.

Senator Flynn: I have a question by way of clarification for the witness. With regard to this first-level liability that is imposed on the cargo, if it remained in the bill as it is presently, how would you meet it? I suppose by way of insurance.

Mr. Lewtas: To the extent we can get insurance, we would, senator.

Senator Flynn: Do you figure the cost of that insurance would be higher than the contribution you would make to the fund, if this liability on the first level was removed?

Mr. Lewtas: I think not, sir, because we would expect that this would be a duplication of our contributions to the fund.

Senator Flynn: Do you expect any substantial gain in the end by having this liability at the first level removed?

Mr. Lewtas: Yes, we do. Our position is that at the first level of liability it is inherent in the structure of this bill that all the amounts that are to be paid under it will be paid by the shipowners' insurers. It follows necessarily that that will happen.

Senator Flynn: With the limitation.

Mr. Lewtas: Yes, that is right, but at the first level of liability our own liability is expressed, I would hope in most cases, to be limited, and the fund, even under the bill as it presently is, is available for amounts that are payable in addition to the limit of liability under the first level.

Senator Bourget: Do you think that form would be sufficient, because I read somewhere in the bill it will be $3½ million in the first year. Do you think that would be sufficient to meet the extra costs of liability?

Mr. Lewtas: The trouble with that, senator, is I suppose you could make the technical argument that one disaster could be $200 million. We would hope that in due course the fund would be built up so that it would meet all disasters. I think the record is that there have been very few, if any, disasters where when you add that amount of money to the limited liability of the ships at the first level you would not be able to pay off all claims.

Senator Flynn: It seems to me, on the second point, that if the shipowner is responsible you have a claim for recovery against the shipowner. Whether you can achieve it is another thing, but in principle it seems to me that if

you have this recourse it does not have to be spelled out any more than it is in this act. When you are jointly and severally liable towards third parties, but as between the two, if one has committed a fault he is responsible to the others.

Mr. Lewtas: We are not at all sure of that. We are looking at it very carefully.

Senator Flynn: I have no doubt of that and I would be surprised if anybody would claim the contrary in law. It is the same as joint liability between the architect and the contractor. If one is called upon to pay for the fault of the other, one can recover from the other. It seems to me that this is clear. The point is that you would want to be able to recover from the ship owner even when no fault can be attributed to him. Can you imagine a case where there would be no fault at all, or no fault that could be identified under section 744, which would give recourse against another third party?

Mr. Lewtas: There are two parts to your question. The first is whether there is a write-over. We have looked at this very carefully and we have concluded that although the law is generally as you have stated it, what we are talking about here is an absolute liability imposed by Parliament upon two people. We know of no precedent for that type of situation and we are afraid that if a cargo owner were to try, in the absence of specific language, to make a claim against a ship owner, a successful defence would be that Parliament in its wisdom imposed absolute liability on both of them, that it does not depend upon the fault of either party, and therefore there is no write-over.

That doubt is enough for us to say at this time, when all ambiguity should be removed, that it would be wise to remove it.

Senator Flynn: Have we established the principle that this is a joint venture between a ship owner and cargo owner, because of the dangerous nature of the cargo, and that there is a joint liability towards the public? I cannot see your principle of recourse against a ship owner unless you are able to prove a fault or negligence on the part of the ship owner.

Mr. Lewtas: All that I am doing is being intensely practical in the matter. This act has disturbed the traditional relationships, as I described.

Senator Flynn: I know; but it exists in other fields, that everybody is liable, that between themselves they have recourse, that the negligence of one may be justified.

Mr. Lewtas: That is not quite my point. I am saying that maritime ventures have been going on for a long time and a certain attitude has grown up about them. What has happened is that risks to third parties have been assumed by the ship owner and the ship owner has traditionally had access to Mr. Brisset's client to make sure that he is properly insured against those risks.

I am saying that just hurly-burly to add the cargo owner to that and not give him an automatic write-over is not adding anything. It is merely adding an additional cost to the maritime venture.

Senator Flynn: We are speaking of dangerous cargo, which is something rather new historically. The disasters that we have known in recent years did not mean a thing 50 years ago.

Mr. Lewtas: We are not here to say that as owners of dangerous cargo we have no responsibility. We say that as owners of cargo we are prepared to stand up and be counted when people start to sue. To say that we cannot have a write-over is merely requiring additional insurance on a risk that is already insured.

Senator Flynn: I would agree that you should have a write-over when it is the fault of the ship owner, but when it is not the fault of a ship owner you can sue the person who may have been negligent.

Mr. Lewtas: But merely by making our right conditional upon his negligence we have added a further cost. There will be further cost placed upon the cargo owner and that cost will eventually be reflected in the cost of doing business.

Senator Langlois: Would you not have the same additional cost? Would not the insurance premium go up?

Mr. Lewtas: Nobody can penetrate the impenetrable mind of an insurer; but I would venture to say that an insurer who saw the potential of a disaster of this type happening and who was asked to insure the ship owner, would make sure that he got the premium necessary to cover every risk connected with that loss. The mere fact that there might be some potential contribution by the cargt owner would not reduce that premium.

Senator Langlois: But the measure of the risk is the same. Whether the losses are paid out by the ship owner or the cargo owner, the amount of risk is the same and the insurer will be called upon to cover the maximum risk. Whether it is paid by one or the other it does not matter.

Mr. Lewtas: The honourable senator is making my point. It is paid by one or the other and it does not matter. But why should we be added, if we do not have the automatic write-over? If we do not have the automatic write-over the insurance companies will say, "If you want us to cover that risk it will cost you more money," and, they have already covered the whole risk by their insurance on the ship.

Senator Langlois: You have not explained how the premium cost will go up if you do not have this write-over. At least, you have not satisfied me.

Mr. Lewtas: Then it is important that I do so. If the cargo owner were not responsible at all there would be a certain premium charged the ship owner. If we add a responsibility upon the cargo owner, and if there are only certain conditions under which he can recover from the ship owner, then when he seeks insurance there will be a measurable amount of cost in that insurance. That

does not mean, however, that there will be a corresponding reduction of the premium charged the ship owner.

Senator Rattenbury: That principle has been established for years in the construction industry where both the prime contractor and subcontractors are insured.

Mr. Lewtas: That is a duplication of insurance.

The Acting Chairman: Thank you, Mr. Lewtas. We will now proceed to hear from Mr. Galipeault, to be followed by Mr. Langelier. As I said earlier, Mr. Galipeault represents Texaco Caanada Limited.

Mr. A. Galipeault, Legal Adviser, Texaco Canada Limited: Mr. Chairman, honourable senators, my contribution this morning will be very brief, since the witness who preceded me himself indicated that his testimony covered the principles which the oil companies submitted to the House of Commons. In fact, you have before you the brief which the Petroleum Association presented on the conservation of the Canadian environment, and Texaco Canada Limited's views on the problem are contained in this brief. Such being the case, I shall not waste the Committee's time by giving a detailed review of the recommendations submitted to the House of Commons. Allow me to say however, that our company unreservedly supports the recommendations and suggestions contained in this brief.

We agree with the objectives of Bill C-2, and even with the principle of total compensation. Nevertheless we disagree with the methods suggested. Our company, like the company which appeared just before us, is opposed to the principle of joint and several liability on the part of the shipowner and the owner of the cargo. As you will see, this is one of the main objections raised in the brief which is before you. Such a concept constitutes a radical innovation in the area of civil liability and we submit, is basically false, in that the owner of the cargo, who has no control over the choice of crew or the way the ship is run, is nevertheless held jointly and severally liable with the shipowner who is the person actually exercising control. Such an approach is somewhat unjustified, as Mr. Lewtas pointed out, and not really necessary, since there are other clauses in the Bill ensuring that damages caused by a disaster will be duly made good.

We support the amendments presented by Mr. Lewtas on behalf of Imperial Oil Limited. I feel the mere fact that two lawyers discussing this clause have different opinions on its interpretation might be taken to indicate a need for some clarification of the clause in order to allow the owner of the cargo right of recovery from the shipowner.

Unfortunately, I have not had time to study Mr. Lewtas' amendment in detail, and I find it hard to express an opinion on this right if the shipowner was not at fault. Let me refer the committee to section 744 (1) (b), and particularly to the exceptions mentioned in (1) (b) (i). According to section 744, a person is not liable under section 743 if it is established that the discharge of the pollutant that gave rise to the liability was wholly caused by, and I quote sub-paragraph (i):

> an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character...

Note that the French text stops after the word "inévitable", whereas the English text also mentions an "irresistible character", despite the fact that it is perhaps difficult to imagine a natural phenomenon which would possess all these qualities at the same time; this text comes from the convention on international civil law discussed in Brussels, but I think that an amendment should be made so that the French text will coincide with the English text.

Senator Flynn: Would you suggest that the expression be "un cas fortuit' (an act of God)?

Mr. Galipeault: Yes, "un cas fortuit". I believe that the French translation is "irrésistible".

Senator Flynn: I am not sure that that is the equivalent of "cas fortuit" in the English text.

Senator Langlois: If "irrésistible" is added after it.

Mr. Galipeault: If "irrésistible" is added, I think it will be perfect.

Furthermore, we submit that paragraph (b) of section 744 might be amended somewhat, because we think that these exceptions should apply not only where the liability is wholly caused by these acts, but also where the liability is only partly caused by them. At least the bill should not remain silent in the matter of partial liability. Again, if we refer to the text of the convention on civil law discussed in Brussels, this text is slightly different from the text given here. Sub-paragraphs (ii) and (iii) of the two texts are identical.

Now let me refer to the provision whereby, over and above their joint and several liability with respect to victims of damage caused by pollution, all companies are to contribute to an indemnity fund to be used for completing payment to these victims in the case of limited liability or lack of funds. Our company prefers this method, and, as pointed out earlier by Mr. Lewtas, we feel that it should be brought in at the first level of responsibility rather than be cumulative.

We believe, however, that international funds currently in existence, or soon to be put into operation, funds like TOVALOP, referred to previously by Mr. Brissett, could provide adequate protection at the present time while awaiting an international fund which is actually under discussion at the moment, and for which, notwithstanding the fact that these funds, TOVALOP and CRISTAL, are based on the principle of voluntary contribution, it may be argued that it would be impossible to force the fund before a court of law for any kind of payment.

Mr. Chairman, our company was happy to learn that the Ministery of Transport officials had indicated their intention to discuss the regulations which would be issued by virtue of the present Bill with industry, and we want to repeat here that companies could contribute if the Department so desired.

These are the only remarks which I wanted to make, Mr. Chairman. I don't think it is necessary for me to

discuss the memorandum before you as Mr. Lewtas has already covered most of the points.

The Acting Chairman: Thank you, Mr. Galipeault.

Unless honourable senators have questions or points they want to raise at this point, I think we may proceed to Mr. Jean Langelier, representing British Petroleum Oil.

Senator Flynn: Is this somewhat along the same lines?

The Chairman: Yes, this is why it would perhaps be preferable to follow with Mr. Langelier.

Mr. Jean Langelier, Q. C., British Petroleum Oil Limited: Mr. Chairman and honourable senators, while we were a party to the PACE brief which was heard before the House of Commons, I appear this morning on behalf of BP Oil Limited, a cargo owner, as I understand that PACE because of the pressure of time could not appear before you today. While I agree with the principle of some of the briefs you have heard today, those of Mr. Lewtas and Mr. Galipeault, and I hope that I will not be repetitious, I will raise other points which may be of interest to your committee.

The Acting Chairman: Before you proceed, Mr. Langelier, perhaps the brief you have submitted and distributed should be appended to the report of today's proceedings. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Langelier: There will be some slight changes as I go along, Mr. Chairman.

The Acting Chairman: The changes will be noted.

Mr. Langelier: Honourable Senators, I would ask you to grant me your indulgence and understanding if I am unable to submit the French version of the remarks which I am about to make this morning. Due to the amount of time allowed, which was very small, and the fact that I did not receive the text until very late yesterday evening, I did not have an opportunity to translate it; however, if it is the wish of your committee that this text be translated, I shall take it upon myself to ensure that it is handed in to you.

Honourable senators, may I now draw your attention to the text of my remarks which you have before you and which I intend following fairly closely.

The cargo owners, under the provisions of sections 743 and 744 of Bill C-2 may be made liable for an amount up to $14 million for each separate incident in respect of various costs and expenses, including all actual loss or damage sustained by the Crown or by any other person resulting from the discharge of a pollutant in the absence of any actual fault or privity on the part of the ship and to an unlimited amount in the event of actual fault or privity.

Apart from what we consider to be the serious inequity of placing such an onerous liability upon the cargo owner—and I add in passing that in the Brussels Convention of which you heard this morning and in the US Water Quality Improvements Act, the burden of liability is placed on the ship owner solely—we understand that he will be faced with the virtual impossibility of obtaining insurance for such unlimited liability, especially as the ship owners themselves will be unable to obtain such insurance in the first place. We take this opportunity to refer in passing to the statement made by the representative of the London Group of Protection and Indemnity Associations before a Special Committee of the House of Commons on Environmental Pollution on November 24, 1970 which reads in part as follows:

> ...We repeat that the capacity of the world insurance market for oil pollution risks is limited in respect of each vessel any one accident or occurrence, to approximately $14,000,000.00 U.S.,... therefore Bill C-2 as it stands even in isolation could not be fully insured.

Honourable senators might recall the testimony of Mr. P. N. Miller of London, England called as a special witness before your Standing Committee on Transport and Communications on February 27, 1969 who stated unequivocally as follows:

> Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between $10 to $15 million—somewhere in that region—but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability.

Mr. Miller further states:

> Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability.
>
> From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself—an additional liability of between $10 million to $15 million or somewhere between $71 and $100 per gross ton.
>
> It is not that we do not want to insure it. It is simply that we cannot go beyond a certain figure.

Should you still deem fit, notwithstanding the representations made by the world insurance market, to hold cargo owners jointly and severally liable for occurrences such as are covered by Bill C-2, and this despite the various objections which have been made to this radical concept of placing liability on passive cargo, unequivocal provisions should be made affording the cargo owner the right to seek reimbursement from a shipowner when the latter is proven to be at fault, as the

present wording of the last paragraph of section 744(1) still leaves great room for doubt.

In their statements this morning Messrs. Brisset and Lewtas appeared to go a long way in clarifying the provisions of that section.

We welcome, under subparagraph (b) of section 744(1), the inclusion of exceptions to liability drawn along the lines of those contained in the 1969 International Convention on Civil Liability for Oil Pollution Damage, but we note that shipowners and cargo owners could only plead in defence such exceptions when the discharge of the pollutant which gave rise to the liability was wholly caused by the occurrences set forth in subparagraph (b)(i), (ii) and (iii)—which refers to the acts or omissions, the acts of God and casualties, and so on.

Senator Flynn: May I just interrupt you for a moment? With regard to subparagraph (b)(ii), have you given any thought to why it is mentioned that the act or omission would have to be done with intent to cause damage? I think that is a rather surprising word—with the "intent" to cause damage. This seems to me to be one rather weak point in the principle that is involved here.

Mr. Langelier: I quite agree with you, sir. My suggestion would be here for consideration by your committee that by giving this defence on a "wholly" basis I think is absolutely unfair, and it should read "on a partially or wholly—caused by". Otherwise if there is contributory negligence on the part of the shipowners—and even to the slightest degree, to 1 per cent, for example—it would not be caused "wholly" by the other party in the event that the Government had not, for instance, installed the proper navigational aids, if it were to proceed under this subparagraph of this section. So we feel that either the word "wholly" should be deleted, but preferably that it should be "partially or wholly caused by" and that would be in line with the normal principles of law in defence in such matters.

Section 745(1) requires that evidence of financial responsibility satisfactory to the Minister of Transport be furnished by the owner of the pollutant in addition to the owner of the ship that carries such pollutant in bulk to or from any place in Canada. We submit that the necessity for liability to be placed upon cargo owner or for the requirement for him to furnish evidence of financial responsibility to cover the same risk as that of the shipowner is not only inequitable and unjust but unnecessary duplication.

We recognize that Canada did not wish to wait for the conclusion of a satisfactory international convention on liability arising from damage caused by spills of petroleum products, because possibly of the delays which may be involved in its ratification by the maritime nations of the world. We would have thought that because of its multinational participation, such a convention would have retained the attention of our legislators as it would greatly reduce the payments required to be made by each company and would eliminate vexatious problems of jurisdiction and duplication. Be that as it may, the world petroleum industry showed a high degree of responsibility in also recognizing that pending the coming into force of the international convention dealing with tanker-owner liability for oil spills and a supplementary fund supported by cargo interests, it was not only important but urgent to establish the liabilities that might arise from pollution damage by the escape or discharge of oil from a ship.

The creation of an oil industry voluntary fund known as CRISTAL—Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution—has now been announced, whereby the new cargo owners' agreement extends the total dollar amount of coverage for each separate oil spill to $30 million, which can be paid to private individuals and corporations, both public and private, as well as to governments. This agreement, which has been signed by the leading oil companies of the world, will be effective in a few days, on April 1, 1971. It supplements the already existing and operating voluntary fund called TOVALOP—Tanker Owners Voluntary Agreement Concerning Liability for Pollution. These two funds count as their members the major tanker-owners and oil companies of the world.

We urge that these funds be studied closely, particularly with regard to the advantages that they offer in relation to the availability of compensation for claims for pollution damage up to an aggregate limit of $30 million, so that no necessity arises for either an initial build-up of cash or a further accumulation after a claim has been settled, and the substantially lower costs that would be placed upon the Canadian economy.

We suggest that the oil industry has met the challenge to which it has been exposed, and should not be penalized, as it is, under the provisions of section 757(1). Payments to the Maritime Pollution Claims Fund should accordingly be made only—and I say "only"—by those others who ship pollutants into or in Canada in bulk as a cargo of a ship and who are not members of the voluntary CRISTAL fund.

If, however, Bill C-2 should be enacted in its present form—and this is tremendously important—CRISTAL will not respond to claims for pollution damage from persons in Canada. This situation stems from the fact that, under clause IV(B) of the CRISTAL agreement, the compensation available is reduced, *inter alia,* by the amount to which persons sustaining pollution damage are entitled under applicable law, and the fact that Bill C-2 essentially provides for entitlement to unlimited compensation from the shipowner and/or the cargo owner and the Maritime Pollution Claims Fund. Equally, the CRISTAL fund will not be available to reimburse Canadian cargo owners who may incur liabilities under Bill C-2, since the fund is designed to respond only to claims from persons who sustain pollution damage.

Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund and, in effect, means that the full costs of providing compensation for incidents in Canadian jurisdiction will have to be borne by Canadians, rather than being spread across the entire world.

We further suggest that provision might be made for sections 746 to 760 of Bill C-2, dealing with the Maritime Pollution Claims Fund, to be proclaimed law at a differ-

ent time from that of the other provisions of the bill. In doing so, the implementation of those sections might be delayed in order to give the Government of Canada an opportunity to see CRISTAL in operation, and then determine whether it might be acceptable for Canadian requirements as an interim measure pending ratification of an international convention.

Gentlemen, that is the extent of my remarks on this matter.

The Acting Chairman: Thank you, Mr. Langelier.

Senator Rattenbury: Do I gather from the witness that in effect he is advocating his withdrawal from the legislation of C-2?

Mr. Langelier: No. What I am advocating is the fact that the cargo owner could be responsible up to the maximum of $14 million, but he should not have to contribute to the levy for the Maritime Pollution Fund.

Senator Rattenbury: But you laid great stress on the establishment of critsal, that it would not be available to Canadians, in effect, if this bill becomes law.

Mr. Langelier: That is quite so. The Cristal agreement provides that the amount to be paid by the institute administering the fund will be $30 million. The agreement provides that compensation will be made to all persons sustaining pollution damage as a result of said incident, regardless of the number of ships from which oil has escaped or been discharged, which in no event exceeds $30 million U.S. less some of the following.

We have been in consultation with the drafters of CRISTAL and the opinion given is that in view of Canadian unlimited liability under the provisions of Bill C-2 CRISTAL would not respond to a claim by Canada. In other words, Canada would be excluded from the provisions of the CRISTAL fund.

Senator McElman: The effect of your propositon would be to retain the maximum of $30 million by CRISTAL without interference by this bill, so that the overall maximum for any spill would be $30 million?

Mr. Langelier: That is not quite what I am saying. We retain the $14 million liability, but we should do away with the unlimited liability provisions of the bill as it stands.

Senator McElman: The effect would be $30 million maximum; is that correct?

Mr. Langelier: That is correct—possibly not by an international fund, but by leading tanker and oil companies of the world, but without increasing the cost of products to Canadian consumers if the bill is passed in its present form.

Senator Rattenbury: And other companies who are not members of CRISTAL would be covered under this legislation?

Mr. Langelier: Pollutants have been described in very general terms, but in terms of the bill the guilty party has been the oil company. They say the levy should be a maximum of 15 cents per barrel for every barrel of oil transported in Canada, and that it should apply to other ships that transport gases and other material of a pollutant nature.

Senator McElman: I believe Mr. Lewtas commented that one spill could run as high as $200 million in damages. I do not know whether he had in mind the Bay of Fundy but that is the area I am thinking of. We now have tankers of the order of 200 million tons coming in regularly, and in the event of a total disaster to one of those vessels, quite aside from the pollution to our shores, there could be almost a total wipe-out of one of the finest fisheries in the world, which could well run to a loss of $200 million. That makes the ceiling of $30 million that you are talking about very small. Where would the additional moneys come from to compensate fishermen in the industry for the total damage?

Mr. Langelier: The question is a good one but not an easy one to answer. As presently constituted the international convention would pay only the $30 million and that would be it. The question is will the Maritime Claims Fund, at 15 cents maximum per barrel, give satisfaction for the amount of damage being sought?

Senator Langlois: It will take at least 10 years to reach your maximum of $30 million at the rate of $3 million a year.

Mr. Langelier: Yes.

The Acting Chairman: Thank you, Mr. Langelier. Honourable senators, it is now 10 minutes past 12 noon. Perhaps we can sit until 12.30 and then adjourn, and resume the proceedings following the recess of the Senate this afternoon. I am advised that the session may not be a long one and that the Senate may rise at 3.30. We could then meet again and proceed with the remaining witnesses.

I apologize the Captain Hurcomb and Mr. Burke, but we have another representative of an oil company in the person of Mr. J. C. Phillips, General Counsel for Gulf Oil Canada Limited, and it might be preferable to hear from Mr. Phillips now.

Mr. Phillips has distributed a copy of his statement and, if it is the desire of honourable senators, it could be made an appendix to the record of our proceedings. Mr. Phillips, you may proceed. See Exhibit D

Mr. J. C. Phillips, Counsel, Gulf Oil Canada Limited, Toronto: Mr. Acting Chairman, honourable senators, the paper that I distributed is really not a submission in the true sense. It is merely a memorandum of notes containing points to which I would like to refer this morning.

Firstly, to put the position of the company I represent into some perspective, I should like to draw the attention of the committee to the fact that Gulf Oil Company is an integrated oil company and, among other things, is in the business of refining, producing and transporting crude oil and refined petroleum products by water as well as by other means.

As an example of the kind of maritime movement that we are engaged in, in the year 1970 the volume of crude

oil and refined products moved by the company by ocean-going vessels from points outside Canada into Canada totalled some 23½ million barrels. In the same period, coastwise movements of these products within Canada totalled some 12,900,000 barrels.

Senator Langlois: In Canadian barrels?

Mr. Phillips: Yes, in Canadian barrels. Gulf Canada owns no ocean-going vessels and its ownership of domestic vessels is limited to one ship of 15,500 dead weight tons. As far as movement of cargoes within Canadian waters is concerned, Gulf Canada is the owner of those cargoes. With very few exceptions Gulf Canada's offshore and crude and refined products purchase contracts are FOB port of loading. This means that title to and risk in the cargo passes to Gulf Canada at the point or port of loading. Now with this sort of background, I think it pretty obvious that the company I represent is interested in Bill C-2 primarily as a cargo owner. For this reason the points I have to make are confined largely to sections 743 through 745 and to some extent with the sections dealing with the proposed maritime pollution claims fund.

Now basically, as Mr. Lewtas earlier pointed out, the bill proposes the two concepts of legal liability which are entirely new to marine law, maritime law or admiralty law. They are new concepts in law in Canada period. First of all you have what has been termed the "primary liability" under which in the proposed bill a cargo owner has the same liability as the ship owner to victims of pollution on a joint and several basis, and this is a liability irrespective of fault. Then over and above that, there is a secondary liability and that is the one which requires cargo owners to contribute to the establishment and maintenance of a maritime pollution fund. Now this fund would be used to provide compensation to a pollution victim over and above that which is recoverable from the ship owner or the cargo owner under the primary liability feature of the bill. I think it is pretty obvious and we would all agree that the purpose of the legislation and the concept which gave rise to it is that all persons who suffer damage as a result of pollution by oil or maritime pollution by oil should receive full compensation. Now I want to make it clear that so far as the company I represent is concerned, I do not disagree with the concept. I wish to make it equally clear that we do not believe that the method of achieving that objective as set out in the bill is fair or equitable or necessary.

First of all let me deal with the question of primary liability. Gulf Canada is opposed to the introduction of joint and several responsibility of cargo owner and ship owner as proposed. Mr. Lewtas touched briefly this morning earlier on the reasons which he had on behalf of his client for his opposition and for his disagreement with this approach. His reasons are largely the same as my own. If you look at this from a practical point of view, you have the situation where historically and under present international convention and under present international usage a ship owner is liable for damage which is caused up to certain statutory limits. In short he has the right to limit his liability. So far as damage caused by pollution under the present bill is concerned, the ship owner is definitely liable up to the statutory limits provided in the bill for damage, loss and expense caused by pollution. In certain cases he has not the ability to so limit it and therefore is objected to unlimited liability. It is now proposed that the cargo owner shall assume jointly and severally with the ship owner that same liability. It has already been brought out this morning that the liability of a ship owner up to a certain statutory limit is insured and it is also brought out that the bill specifically provides for the filing of evidence of that insurance and in a form which permits the claimant to reach directly the guarantor or insurer. The question that I have to ask is this; what useful purpose is served by joining the cargo owner in these circumstances particularly when creating a completely new concept in the law of liability? Now if there was a necessity for it or a good reason for it, that would be a different matter. But as we see it, there is no reason or necessity for it, because behind this primary liability under the proposals contained in the bill will be constituted a fund which will be available to provide compensation to pollution claimants over and above that which they will be able to recover from the ship owner. We therefore feel that as long as the concept of a fund in its present form is retained, there is absolutely no reason, no necessity nor really is there any justice or equity in providing in this primary level a joint and several liability of the cargo owner with the ship owner. Certainly if despite the rather ingrained attitude that seems to prevail on this point up to this period of time this concept of joint and several liability is maintained, I would fully support and endorse on behalf of Gulf Canada the amendments proposed by Mr. Lewtas this morning dealing particularly with the specific right of recourse which should be given to the cargo owner to recover over and against the ship owner in respect of any payments which the cargo owner may be called upon to make under the provisions of the bill.

Secondly, I endorse Mr. Lewtas' proposed amendment dealing with the fault or privity position, and I would for the sake of brevity adopt the arguments he has put forward in support of that proposition.

Now, if I may spend a moment on the question of the maritime pollution fund which is the so-called secondary level of liability imposed on the cargo owner, again I say that in considering the fund, it must be considered in context with this primary liability question that I have been belabouring for the last few minutes. First of all it is clear from the provisions of the Act that the fund may be drawn upon to compensate for damages caused by any pollutant, whether it be oil or anything else. The fund contributors as the bill stands will be limited to the owners of oil cargoes. In our view this does discriminate against members of the oil industry to provide a fund which at this point in time and with the bill in this form and in the absence of any regulations to the contrary requires the oil industry to subsidize pollution damage from all forms of pollutants. In our view the bill should be amended to provide that the fund be not available for disasters caused by pollutants other than oil until such time as the owners of cargoes which are deemed to be pollutants other than oil are required to contribute to the fund.

We also believe that the exceptions which are contained in section 744, with respect to the liability of shipowners, should apply to the absolute liability of shipowners and should apply to liability on the part of the fund itself.

An item which we believe to be important in connection with the fund is that there is no clear definition of what constitutes an inland voyage. I think this is particularly important from the point of view of the members of the oil industry. I say that, for this reason, that, for example, a cargo of bunker may be brought from a point outside Canada, shall we say, to Point Tupper in Nova Scotia. It will be trans-shipped and put in tankage at Point Tupper, Nova Scotia. It then can move from Point Tupper to Montreal via another ship. It can be stored in Montreal. It is then possible for that bunker to be further shipped from Montreal to Clarkson, Ontario, put in tankage at Clarkson, Ontario, and can then go from the tankage in Clarkson, Ontario to a harbour ship to bunker other vessels.

On the basis of the bill as it presently stands, there could be a maximum 15 cents per ton levy, which would be contributed to the fund, imposed on the move into Point Tupper, again when the same product moves from Point Tupper to Montreal, and again from Montreal to Clarkson, and possibly into the small harbour boat that is going to bunker other vessels.

The same thing applies to crude oil. Crude oil can be brought in by ship from a point outside Canada to, shall we say, a refinery in the Maritimes, and a levy will be placed on that crude oil which comes in, and it will go into the fund. That crude oil will be refined in a refinery in the Maritimes, and the products of that crude oil will again be trans-shipped from the point of process to a number of other points, perhaps two or three in number, subsequent to the refining process being completed. Again, the same product becomes subject to a number of levies under the bill as it presently stands. Terminally, and the trans-shipment to various terminals, intermediate stops, in the Great Lakes system, for example, can also pose a problem unless there is a specific and clear definition in the bill as to what an inland movement of this kind of product actually constitutes.

We believe too that the bill should specify a maximum amount. In short, as it is presently constituted, the act provides that contributions will be made to the fund on what would appear to be a possible perpetual basis without regard to experience and without any limitation on the total amount which can be accumulated in the fund.

Again, this is something which can be corrected by regulation and, undoubtedly, the regulations will deal with the practical administration of the fund in this respect. However, it is our experience that unless a maximum of some sort in these circumstances is specified in the bill itself, the regulations seldom are satisfactory when they are put together.

We therefore urge that a maximum—subject to whatever increases or decreases, based on experience, may from time to time be deemed necessary—be inserted in the bill at this time.

So far as the maximum is concerned, it has been expressed before the committee of the other house that a figure of $10 million would seem to be sufficient, based on present experience. I am advised that this figure of $10 million is not based on Canadian experience, but is one which has been developed on an international experience basis to this point in time.

Mr. Chairman, Gulf Canada does view with some regret the fact that the liability provisions contained in Bill C-2 have not been brought entirely into line with the Brussels Liability Convention. We feel that this is particularly regrettable due to the known progress which has been made in the establishment of the International Compensation Fund for oil pollution damage.

I think all members of the committee are aware of these matters, and I do not propose to elaborate on them. I would say that the fund which is contemplated is a cargo-supported permanent fund which would supplement shipowner liability for oil pollution up to a maximum of $30 million per incident.

It is and it has been noted already that compensation can only be made available out of the fund in countries which ratify the Convention. It is our understanding that if Bill C-2 is passed in its present form, should this permanent fund be established Canada would be debarred from participating in the fund unless and until either Bill C-2 at that time be withdrawn or suitably amended.

I think too it should also be noted—as my predecessors here this morning have pointed out—that there is in existence a voluntary agreement among the international oil companies known as the CRISTAL Agreement which I understand too will become effective on April 1, 1971, under which there will be available to provide compensation to pollution claimants an amount of up to $30 million per incident.

In view of these circumstances which have arisen and have taken shape prior to the introduction of Bill C-2 originally, we do believe that a further look should be taken, particularly at the liability provisions of the bill, dealing again with the primary liability question, to bring the proposed legislation into line with the draft of the Brussels Convention, so that there will be no conflict between the two if, as and when the international convention is finalized.

That really concludes the remarks I have to make. I have with me three gentlemen: Dr. John Lovering, who is the Chairman of the Gulf environmental affairs committee; Mr. Horace McTavish, who is Manager of Gulf's transportation department; and Mr. Fred Atkinson, who is Gulf's co-ordinator of environmental control. If necessary, these three gentlemen will help me in answering your questions.

The Acting Chairman: Do honourable senators wish to entertain questions, or should we adjourn and resume our sitting when the Senate adjourns?

Senator Flynn: Let us conclude when the Senate rises this afternoon.

The Acting Chairman: Then we will adjourn until the Senate rises this afternoon.

—Upon resuming at 4 p.m.

The Acting Chairman: Honourable senators, we now have with us Captain P. R. Hurcomb, General Manager, Dominion Marine Association, Ottawa.

Captain Philip R. Hurcomb, General Manager, Dominion Marine Association: Mr. Chairman and honourable senators, the Dominion Marine Association represents the Canadian registered inland shipping trading in the Great Lakes and the St. Lawrence river. There are 22 companies. We have 160 vessels and these vessels include 37 tankers. By the way, this is about the only Canadian registered fleet of significance in the orthodox sense. We have very extensive operations on the west coast but these I mention are the Canadian registered ships of substance.

I should emphasize here that I speak here for the shipowners, as distinct from the cargo owners. Some of our members—we have Imperial Oil, Shell Oil, Gulf Oil and Texaco—are of course cargo owners as well as shipowners. They have spoken as cargo owners and if I say anything here inconsistent with the views they have expressed, obviously they are out of the ambit of my remarks.

Mr. Chairman, after very extensive committee hearings in the House of Commons a number of changes were made to the bill. Most of these had been recommended by the various interests you have heard today.

These changes were all to the good, they improved the bill; but there are still one or two things that, from our standpoint, we think remain to be done.

Generally speaking, the bill imposes many onerous obligations and costly obligations upon shipowners in the Great Lakes which we cannot help feeling, perhaps, are not entirely justified by the situation we are in, that is to say, the safety record, and everything else. We will say nothing about those aspects of the bill. We will simply come to the two or three main features.

First of all, may I say that we agree entirely with the points of procedure, as he described it, that Mr. Brisset recommended to you this morning. We agree with the substance of the amendments that he presented to you.

I then will spare you a repetition and simply speak of three points that affect us particularly. The first is a matter of absolute liability. When this bill came to the House of Commons first it was a situation of absolute liability. There were no defences to the claim against the shipowner and the cargo owner.

The House of Commons committee recommended—and this is written into the bill—certain defences. They are the defences which appear in the international convention but they really did not affect the practical situation, as you will see when you look them over.

The exceptions are: First, an act of war, hostilities, civil war, insurrection, natural phenomena.

The second exception is, an act or omission done with intent—some form of sabotage.

The third was the wrongful act of Government or some similar agency, for failing to place navigational aids where they ought to be.

Those exceptions really do not cover the majority of situations. The common situation will be where the spill was caused by the negligence of a third party. Let us say, a tanker proceeding on its lawful way, with complete care, is run into by perhaps a dry bulk carrier, perhaps of our own association. It would not be a defence to the tanker owner or the cargo owner to establish that the real cause was the negligence of this third party. We think it should be, we think that should be a defence. This is the traditional approach to marine litigation and we see no reason to depart from that traditional approach here.

The answer will be, I suppose, by Mr. Macgillivray and his department that he has simply used the same exception as is set out in the Brussels Convention. That is not a justification, in my opinion. In the United States, under their act of 1970, they are far more specific in covering the same kind of situation. They set up the following defences: First, an act of God; second an act of war; third, negligence on the part of the United States government; and fourth, an act or omission of a third party without regard to whether any such act or omission was or was not negligent.

In other words, the association in the United States has a device we here do not have, and I commend it to your attention, Mr. Chairman. It is a matter that might very well be remedied. That is my first point.

My second point has to do with a matter raised initially by Mr. Lewtas, and, I believe, subscribed to by Mr. Galipeault and the other two representatives of the oil companies. They all felt that there ought to be in the act specific provision for a right of action over on the part of the cargo owner against the shipowner. You remember that the act makes those two people jointly and severally liable, but since the cargo owner, as Mr. Lewtas points out, has no control over the cargo once it is placed in a ship, it is therefore unfair to saddle the cargo owner with liability without giving him a statutory right of action over against the shipowner and he suggests that they should have that right of action whether or not the shipowner was negligent. That is where I have to disagree. I am sure that with respect to what I am now going to say the oil company members of DMA will want to disassociate themselves completely, but we would be quite content to have a right of action over against the shipowner where the latter is at fault; but we think it is going one step too far to give that right of action over whether or not the shipowner is at fault. That is the reservation we have about that suggestion.

As Mr. Lewtas and the others have said, the idea of making the cargo owner responsible is a radical departure from the normal procedure of matters. We, as shipowners, say nothing about the wisdom or otherwise of that approach. That is not our concern. We do not favour it; we do not disfavour it. But Mr. Lewtas talks of the cargo owner being innocent of necessity in respect of anything that might happen after the tanker is loaded. That is true, but we, too, as shipowners are under the existing act saddled with responsibility however innocent we may be. So I would say that the field is littered with the bodies of the suffering innocent of various types, and we too as shipowners, are saddled with this responsibility despite our innocence.

I hope I have made that clear, Mr. Chairman. We would not object to a right-over being spelled out in the event of negligence on our parts. We think this exists in the common law in any event. But we go no farther than that.

Finally, I come to the third and last point, Mr. Chairman, which is unquestionably most important from our standpoint. This was mentioned by Mr. Brisset, who gave it particular emphasis as I recall. I am referring to the international relationship, the U.S.-Canada relationship. When the lofty minds of the Department of Justice drafted this proposed legislation I believe they were thinking in terms of *Torrey Canyons* and *Arrows* and international shipping generally. I do not think they thought very much about the situation affecting Canada's only registered fleets, and that is the inland waters. Everywhere we go in the Great Lakes, and virtually everywhere we go in the St. Lawrence north of Beauharnois, we are in and out of the United States waters. The United States ships and other ships are in and out of Canadian waters. It is, in effect, a single body of water.

This was recognized in 1909 by the passage of the Boundary Waters Treaty Act. It is a single body of water. You must have compatibility of legislation in matters dealing with commerce in those waters. This is one of the things we do not have in this bill.

We have the Water Quality Improvement Act, 1970, in the United States and we have this bill here, and the two are divergent; each goes its own way. There is room for some compatibility and some negotiation between the two countries. The particular point I am thinking about is the matter of settlement of claims. Under the US legislation, the limitation of liability is $14 million, the same as is provided for in this bill, but it is $100 per gross registered ton up to a maximum of $14 million. That is US law. The Canadian limitation is roughly $137 or $140 per net registered ton with a maximum of $14 million. So those limitations work out pretty well even.

But if a disaster were to occur in the Great Lakes, it is going to effect both sides, both waters and probably both land areas particularly in the Detroit River, St. Clair River, St. Mary's and the Narrows Channel. It is bound to affect them. But the legal position as this bill now stands is this; we Canadian ship owners have to, and we are doing this now, establish financial responsibility in the United States even for our dry bulk carriers up to these limits that I have mentioned. It is quite an administrative procedure and we are having great difficulty with it. If an accident were to occur in United States waters, we would be liable up to these limitations, so you have a potential limit of not $14 million but more likely, because of the size of our ships, $2 million. If pollution ran over to the Canadian side or if there were some doubt as to where the accident occurred, we would have the same limitation under the Canadian Act, so you would have two sets of circumstances.

Senator Flynn: Does it depend where the accident occurs and not where damage has occured?

Captain Hurcomb: I think that is true, Senator Flynn. Nevertheless, we lawyers were arguing about this just a few moments ago, and the consensus seems to be that if an accident were to occur to a Canadian ship on the US side of the St. Clair River and polluted both countries, certainly the United States would have the basic action because the accident happened in their waters. Incidentally, May I interject here that there are some very good lawyers at this hearing so I hope if I say something outrageously wrong somebody will jump up and scream. So the Americans have first shot, but the pollution has come over into Canada and has damaged the fishing there and has damaged land owners in Canada. So where does the money come from to pay for that? There is an impression now that this money would come out of the pollution fund—that is the 15 cents per ton that our friends, the cargo owners have paid for—in that event. It is a curious result, but the point I am trying to get across is that you cannot take the boundary line in this area and just say "All right we will have one line and one administrative procedure in this area here and another over there." It is not that simple. What we want is a provision in this act which permits negotiations with the United States to work out comptatible regulations and a system whereby only the one limitation—not the two, but the one—would be paid into court and all the claims on both sides would be pro rated out of that single fund. This makes sense and it fits in with the kind of compatibility you have all throughout the Great Lakes.

You could carry that further on the west coast. We hear this talk of a pipeline from Prudhoe Bay in the Arctic to Valdez on the coast of Alaska, and then your huge tankers running down the coast. These tankers, when they get close to Seattle, or Cherry Point, where the big refinery is, would be coming very close to Canadian waters. We think they could avoid Canadian waters, but they are on the Straits of Juan de Fuca narrows and they can go this way or that way, and they are 200,000-ton tankers. How are you going to work out claims as between Canada and the United States without some kind of provision for agreement and compatible regulations?

So, to make a rather long story short, Mr. Chairman, there was an amendment suggested when the U.S. bill was first presented, designed to achieve just what I am talking about here. This was dropped because Canada and no other country had shown any interest at the time. And remember it is not in the U.S. act, but it is our suggestion of the kind of thing we would like to see in our act. By the way, this appears in Issue No. 6 of the minutes of the House of Commons Committee, dated November 24, at page 6.57. If I may, I will read it; it is quite short. Where appropriate I am going to say "Canada" instead of "the United States".

> In any action instituted by Canada under this subsection the aforesaid maximum amount of liability of

I will say:

> ...$140 per gross registered ton or $14,000,000... shall be reduced by such portion of the amount paid or payable to the Government of any other Country, in respect of liability for the cost of removal of oil or matter, arising out of the same incident, as such

other Government would have been entitled to receive if Canada and such other Government had agreed to share the amount of such maximum liability in proportion to their respective removal costs.

This is the point. Practically speaking, I suppose if a claim were initiated on the Canadian side, the amount under limitation of liability would be paid into the Federal Court, I suppose, and the federal court would hold this and would pay out of it not only Canadian claims but U.S. claims as well.

Senator Flynn: May I suggest a solution to this problem? The discharge of the pollutant is the fault itself, but the right of action arises when the damage is caused and it is where the damage is caused that the right of action arises. So I would suggest that damages done within Canadian territory, or within the limits prescribed by the act, would be under Canadian jurisdiction, and damages sustained in the U.S. would be under U.S. jurisdiction—wherever the accident occurs. Because if you discharge a pollutant 50 miles from the shore and it does not reach the shore, who is going to complain? And who can complain, and what law would apply? It seems to me that the rule would be determined by the place where the damage would occur. If I shoot someone across the border, then it is where the bullet is received that the jurisdiction would take place.

Senator Bourget: What about responsibility? If the accident happened in Canadian waters and then it is spread over into U.S. waters there would be, according to the act, double responsibility, not limited to $14 million but to $28 million, because you have two countries who would be after the ship owner or the cargo owner.

Senator Flynn: That is so, if the damage affected two countries. but if an act did not occur in Canadian waters but caused damage in so-called U.S. territory I think that only the U.S. court would have jurisdiction.

Senator Bourget: I am not a lawyer.

The Acting Chairman: That was the point raised by Captain Hurcomb.

Senator Bourget: I think it is a very important point.

Captain Hurcomb: Senator Bourget has raised another point. The bill is so complicated. Another provision for ensuring financial responsibility, which was discussed this morning, was section 745 appearing on page 15, that the owner of any ship carrying a pollutant to or from any place in Canada must establish in advance his financial responsability. So that if something happened he would not run away and be home free. But that provision is worded curiously. It says:

> This shall be done by the owner of any ship that carries a pollutant in bulk to or from any place in Canada.

Everything hinges on "to or from any place in Canada". Let us say that an American ship passes through Canadian waters in Lake Erie, as it must do at some point, but never goes to a Canadian port at any stage of the game. Let us say it is carrying oil from Detroit to Chicago.

Senator Bourget: Or from the west coast.

Captain Hurcomb: It gets into Canadian waters, but neither of the terminii of the voyages is in Canada. Our legal opinion is that an American ship does not have to establish financial responsibility because he is not carrying a pollutant to or from any place in Canada. That should be straightened out.

Senator Flynn: If it does not have to establish financial responsibility, would you suggest it has not the financial responsibility required by the act?

Captain Hurcomb: If you can catch him if, say, there is a collision.

Senator Flynn: If you are speaking of the problem of enforcement, then that is something else.

Captain Hurcomb: Let me give you the other side of the coin on that question. Assuming that a Canadian ship is carrying oil from Montreal to Toronto, or Port Credit, and no U.S. port is involved, but it goes into U.S. waters at some stage. Under United States law the Canadian ship is obliged to establish financial responsibility because the wording says not "to or from a place in the United States", but "using any port or place in the United States or navigable waters of the United States". I am reading from the United States act which honourable senators do not have before them. I am trying to show that Canadian ships must establish financial responsibility.

Senator Flynn: Are you suggesting that we improve our act in this respect?

Captain Hurcomb: I think it should be clarified. I feel proof of financial responsibility should be required of any ship that enters Canadian waters, as defined in this bill, with a pollutant.

Senator Rattenbury: That will require a great deal of bookkeeping.

Captain Hurcomb: This really is final, Mr. Chairman. The big difficulty in not having Canada-US agreement of some kind is that we might be conceivably faced with liability under both the US act and the Canadian act, with two sets of maximum limitations of liability filed one on top of the other, the US and the Canadian. The P and I people have said that they will not insure in a situation where, arising out of the same incident, there are two sets of liability established by two diffrent environments. Now, in my opinion this highlights or emphasizes the necessity for US-Canada compatibility and we think that the door should be opened to negotiations between the US and Canada. That is all we ask.

Senator Flynn: You do not need anything to do that; the two governments can negotiate. However, the way I read clause 737, the fact that discharging pollutant, wherever you discharge it, if it goes into Canadian waters or Canadian territory and causes damage, creates liability and gives the recourse against the shipowner or the cargo owner.

Captain Hurcomb: Even though the incident occurred outside Canada?

Senator Flynn: Yes.

Captain Hurcomb: With great respect, sir, I consider this is very questionable.

Senator Flynn: Well, if you discharge a pollutant and cause damage in Canadian waters, even if you do it 50 miles from the shore.

Captain Hurcomb: I am afraid this is not the view entertained by others.

Senator Flynn: I would like to have the opinion of the counsel of the department and if Mr. Brisset is willing to offer his I would be pleased to listen to it.

The Acting Chairman: Senator Flynn, I believe those are the kind of questions we should proceed with after we hear from Captain Hurcomb and Mr. Burke.

Senator Flynn: I do not intend to pursue that, Mr. Chairman.

Captain Hurcomb: Mr. Chairman, I will not labour this any further; I will be here if I can be of any help.

Senator Bourget: Do you have no amendments to leave with us?

Captain Hurcomb: I can only say that we subscribe to the amendments proposed by Mr. Brisset, at least in principle. We have only these further amendments, which I really have not put into words because the matter is mightily complicated, in connection with permitting an international agreement between the US and Canada.

The Acting Chairman: We will now hear from Mr. J. J. Burke, General Manager, Canadian Chamber of Shipping.

Mr. J. J. Burke, General Manager, Canadian Chamber of Shipping: Mr. Chairman, honourable senators: my name is James Burke. I am the General Manager of the Canadian Chamber of Shipping, which is an organization comprised of Canadian associations concerned with or having an interest in maritime affairs.

Very briefly, our raison d'être is to protect and promote the interests of the members of our constituent groups, which include the Shipping Federation of Canada, the British Columbia and Maritime Employers' Association; the B.C. Tugboat Owners' Association; Canadian Shipowners' Association and the Chamber of Shipping of British Columbia.

We are of course concerned with the problems which the preceding speaker has drawn to your attention and we support the views he has so ably expressed to you. We also support the views as just expressed to you by Captain Hurcomb on behalf of Dominion Marine Association. It is not my intention to comment on any particular section of the bill which you are considering now. Experts have testified already before the committee of the other place and indeed the views of the industry were expressed at some length and resulted in a number of desirable amendments.

We wish to express the views of some of our constituents in so far as international aspects of some of this proposed legislation is concerned.

With your permission, I would like to read from a prepared statement, of which I have provided copies. Is that in order?

The Acting Chairman: Yes.

Mr. Burke: Shipping is an international business involving the carriage of cargo and passengers between more than 100 separate sovereign states. A single voyage from one port to the next may involve a ship passing through the waters of many coastal states.

There is no supra-national body which can legislate for all the waters of the world any more than for the air above them or for outer space. Thus the only two possible ways of creating any laws for shipping are...

(i) separate legislation by each separate coastal state;

(ii) international agreements freely arrived at by governments and freely accepted by them.

Where national legislation affects shipping only incidentally, e.g. the ordinary criminal law, it is inevitable that there will be some variations between different local laws. Where, however, legislation is peculiar to shipping and affects foreign as well as national flag vessels it should, as far as possible, be on lines internationally agreed. There are three reasons:

(a) The practical consequences of a new bill are not always fully appreciated by its authors. Examination by world experts at IMCO can test the soundness of new ideas and proposals; those which receive their endorsement will normally be readily accepted by both governments and shipowners. As a consequence, the required measures may be widely introduced even before the appropriate convention has come into force.

(b) However reasonable individual national legislation may be, even minor differences between the laws of states can cause major practical difficulties for world shipping and consequently world trade.

(c) Even if national laws are identical, there may, in the absence of any international agreement, be serious problems owing to the fact that a shipowner instead of satisfying one state (the flag-state) must satisfy separately and individually every coastal state to which his ships may go. For example, shipowners have said that they can live with the compulsory insurance provisions of the International Convention on Civil Liability for Oil Pollution Damage; they could not live with a situation where every coastal state had to be separately satisfied of a ship's financial responsibility—even if the requirements under national legislation were less stringent than those in the Convention.

For these three reasons, shipowners' constant theme is that shipping is an international business and all problems, except the most local, should be resolved internationally. If a country "goes it alone" the result it desires may not be achieved; even if it is achieved it may be

only at a disproportionate cost to its own economy. For example, if a country requires vessels to be designed and equipped in a way which no other country demands, fewer ships will be able to serve it, and those that will have greater expenses to recover.

Extra costs, whether of equipment, running expenses or liability are likely to be passed on through freight rates to the importer and exporter. Where those costs arise from action in one country only, the resultant burden on that country's trade is inevitably much higher than where the cost arises from any international agreement. It is occasionally suggested that the plea for international agreement is an attempt to delay unpleasant legislation. It is not; shipowners have a long record of anticipating legal requirements and acting without delay on items on which there is international agreement. For example, the load-on-top system was widely introduced well ahead of the necessary amendments to the Oil Pollution Convention 1954, and shipowners have complied with IMCO's traffic separation schemes without waiting for their formal adoption by the IMCO Assembly. In the field of liability for oil pollution damage, tanker companies representing over 80 per cent of the world's tanker tonnage have, through TOVALOP, voluntarily accepted a responsibility over and above their legal liability.

Against this background shipowners feel justified in calling on governments to stick firmly to international solutions to the problems of oil pollution. This means for example that national legislation or liability should be based on the International Convention on Civil Liability for Oil Pollution Damage and in due course, on the proposed Convention on an international compensation fund.

Meanwhile, full advantage can be taken of the voluntary schemes set up by the industry.

Other measures against oil pollution have been agreed internationally and shipowners welcome national implementation of the International Convention on Oil Pollution 1954-69—when the shore reception facilities envisaged in the Convention have been provided—and of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

In other words, honourable senators, we sincerely hope this committee will recommend that the Canadian Government take prompt action to provide the impetus necessary to bring about as soon as possible an acceptable international agreement.

You may recall that the Minister of Transport, Mr. Jamieson, said in part, before the Special Committee on Environmental Pollution of the House of Commons, and the reference is to the Proceedings of that committee, Issue No. 2, page 2:30, dated Tuesday, November 3, 1970, and I quote:

> We still are seeking international agreement. We have indicated, and I have said in the House, that if we can get an international agreement that is satisfactory we will be glad to eliminate this legislation, but in the meantime we put this in place as really what was the best that we could do as a single country.

It would seem that the minister felt that this is stopgap legislation which is now being dealt with, and he recognizes the desirability and need of a satisfactory international agreement.

Again it is our desire that this committee endorse this view and at the same time emphasize the urgency of the matter when submitting its report.

Mr. Chairman, that is all I have to say on behalf of the Canadian Chamber of Shipping. However, the Canadian chamber is a constituent member of the International Chamber of Shipping and in this morning's mail I received a written submission from the International Chamber of Shipping.

Copies of that submission were made available to the clerk of the committee this morning and I presume that they have been circulated to all members of the committee.

I must point out that our own members have not seen this submission and therefore I am not empowered to comment on it. Moreover, I would not be in a position to comment on it in any event, having only just received it.

However, if it is agreeable to the committee, I would respecfully suggest that the ICS submission be written into the record of this committee. The International Chamber of Shipping sent a delegation to Canada in November to appear before the House of Commons committee and at that time they advanced their views at some length. They would like to have participated in this discussion today, but because of the time element they were unable to do so. Hence the written submission. If you can see your way clear, Mr. Chairman, to reviewing the views of the ICS as submitted in their written brief, we would be very grateful.

That is all I have to say, Mr. Chairman.

Senator Flynn: There is no objection to this, but would the witness summarize the conclusions of this submission? Do you recommend anything specific as far as this legislation is concerned, or does it contain only general observations on the need to have international agreement on the matter?

Mr. Burke: I gather, Senator Flynn, that you do not have a copy of the paper I am referring to.

The Acting Chairman: It is marked "Submission by The International Chamber of Shipping in Connection with Bill C-2, An Act to Amend The Canada Shipping Act".

Maybe, Mr. Burke, for the benefit of the committee you might read from page 5 under the heading "General". There you set out your summary and it is not very long.

Mr. Burke: Well, I am conscious of the time and I have noticed that you had many questions to ask of the witnesses who have appeared and I was merely attempting to be brief. However, I shall be glad to read that section.

Senator Flynn: I think the answer is the one I suggested, that is that you recommend international agreement in dealing with this particular problem.

Mr. Burke: That is true, senator, but they have in fact made separate specific observations with respect to particular facets of this section of the bill.

Senator Flynn: Is it a very specific amendment they recommend?

Mr. Burke: They have suggested changes, but they have not put forward any particular amendments as such. If there is time, Mr. Chairman, I could read the paper.

Senator Smith: This can form part of the record anyway. If it is of interest and help to the committee to have a general summary read into the record, well, that is fine.

Senator Flynn: If there are any specific important amendments proposed in this, I would like the witness to underline them. I see one item there which says:

> Section 4 of the Bill now provides that the Act shall come into force on a day to be fixed by proclamation but makes special provisions for Section 745 of the Canada Shipping Act.

That is a matter of procedure, and I think you need not discuss that. Mr. Macgillivray can look into that. So I would not call that an amendment of substance but is there anything else?

Senator Rattenbury: I think there is a little nitpicking involved here.

The Acting Chairman: Is it agreed, honourable senators, that this submission shall be printed as an appendix to today's report?

Hon. Senators: Agreed.

(For text of submission, see Appendix "F")

Senator Burchill: Where are the headquarters of the International Chamber of Shipping?

Mr. Burke: In London, England, sir.

The Acting Chairman: Now, honourable senators, as we agreed this morning, perhaps we could hear from Mr. Macgillivray.

Senator Flynn: I have a question. I think everybody is in agreement with the witness that international agreement in this field is very important because most of the ships operate on an international basis. Therefore there is nothing we can do about it in this particular legislation. Our terms of reference in this committee are to consider the bill and see whether we can amend it. Do you see how we could implement your recommendation in order to have an international agreement in this bill? I do not see how we could do that. We can express a hope which would be neither pious nor useful because I think the Government is very much aware of its responsibilities to try to reach some agreement with all nations concerned. But is there anything specific that we could do with regard to this bill to implement your recommendation?

Mr. Burke: I think, Senator Flynn, you will recall that the Special Committee on Environmental Pollution in the House of Commons had no less than, I think, 14 sessions. They very thoroughly examined the bill and there were many contentious points raised. Some were solved, some were probably partially solved, but others were not. In the little time before this committee today it has been brought to light, very emphatically, that this is a complex piece of legislation.

Senator Flynn: I agree.

Mr. Burke: I think we all agree on this.

The Canadian Chamber of Shipping—as opposed to the International Chamber of Shipping—as Canadians we endorse the principle and thought behind it, and we are in sympathy with it; but we can see the complexities arising out this and we are not commenting on the bill itself or any particular part of it, but rather what we are saying is that this more than brought to light the problems that this legislation will be faced with, and we hope that your committee will recommend to those responsible that they pursue the idea of reaching a satisfactory international agreement as quickly as possible, without affecting this legislation.

Senator Flynn: Maybe it would be the wish of the committee to do that, but I have some doubt that we have the authority to do so. In any event, I wanted to make it clear that it was your hope.

Now, with regard to variation between the responsibility of shipowners and cargo owners from one country to the other, of course, this is not the only field where you find this variation. You have it for the car owner who travels from one country to the other, or even from one province to another. Naturally, everyone hopes that there is some similarity between the rules applicable in such instances, but these differences are not necessarily insurmountable. In due course, I suppose once we have established a new code or a new rule respecting the liability of shipowners and cargo owners in the matter of pollutants, we will move towards uniformity, but this can hardly be achieved immediately. It is a process that will normally take place, and I can assure you that it is the wish of anyone who is familiar with this problem that this should occur as soon as possible. However, I am doubtful that we can do very much about it with this particular bill that is before this committee.

Mr. Burke: In my ignorance, Senator Flynn, I was under the impression that this committee could make recommendations along the lines I suggested—that is, to speed up the machinery to develop the international agreements which I think you concede are desirable. We are faced with the situation now, in the States, for instance, where you have legislation in Florida, Massachusetts, Michigan, Washington and California, and everything is at sixes and sevens and no one knows where they stand.

Captain Hurlcomb very ably illustrated the problems facing us in our relationships with the United States in so far as the international boundaries or the contiguous zones are concerned. These are problems that face us, and hopefully they will be surmounted. As you say, they can be surmounted, but in the long run it is evident from

where I sit that when an international agreement that is acceptable to Canada is brought into force, then we shall have made a big step in the right direction, and the sooner the better.

Senator Flynn: I do not want you to misunderstand me. The evidence that we have heard and which is included in our record will certainly be helpful to the Government and to the department concerned. What I was suggesting is that we can hardly make any specific amendments to the bill based on your general observation that there should be unity of legislation in this matter between countries.

Mr. Burke: Nor was that my thought, senator. I was not referring to any specific part of the bill but rather to it in general.

The Acting Chairman: Thank you, Mr. Burke. We have now reached the stage where a number of important, complex and contentious points have been raised. We shall hear from Mr. Macgillivray. I do not envy him because I do not think that in the time available this afternoon he can answer in detail all the questions raised, but I am sure that he will be able to bring some light to some of them.

Senator Flynn: He could come back next week.

The Acting Chairman: Yes. It is the intention of the committee to adjourn later this afternoon and to hold further meetings next week. That will give Mr. Macgillivray an opportunity of discussing with the minister the points which have been raised. Mr. Macgillivray you may proceed.

Mr. Macgillivray: Thank you, Mr. Acting Chairman. It is clear to me that honourable senators have shown an interest in some of the points raised and it would, of course, be helpful to me, in discussing the matter with the minister, to be able to indicate whether the members of the committee appear to support any or all of the proposed amendments.

Senator Flynn: May I suggest that we would support any amendments that are valid. We are trying to do our best. We are not prejudiced at all.

The Acting Chairman: I am pleased to hear the honourable senator say that and I hope he is speaking for all members of the committee.

Senator Flynn: Apparently Senator Rattenbury wanted to be excluded from my remarks.

Mr. Macgillivray: It is, of course, a very complex bill and we have recognized this fact from the outset. We are breaking new ground and it would be surprising if at our first attempt we produced a perfect bill.

I will try to go through the points that I made a note of as they were raised. Mr. Brisset raised the point that we do not have in this bill the procedural provisions for an action for limitation. He suggested that we should include provisions equivalent to those contained in section 658 and applicable to the ordinary action for limitation. That is a point on which I will have to take advice from officers of the Department of Justice. Certainly we do not wish to leave a hazy area here that might involve a good deal of trouble and perhaps protacted litigation.

Senator Bourget: May I interrupt Mr. Burke. He mentioned section 658. I should like to have a copy in order to follow it.

Senator Flynn: C'est un peu le principe de la loi de faillitte.

Mr. Brisset: Oui.

Mr. Macgillivray: Section 658 is marginally noted as power of the court to consolidate claims. This is the provision under which it is possible for the shipowner, firstly if liability has been proven and he then wishes to take advantage of the limitation provisions of the act, to apply to the court for limitation. In order to do so, he pays into court the total amount of his limitation fund and the court distributes it according to certain rules.

Senator Flynn: If the amount of the claim is higher than the amount deposited, there is a proportionate apportionment.

Mr. Macgillivray: Yes. Mr. Brisset and Captain Hurcomb both have raised the problem respecting claims in another country. It is almost certain that any claim in another country arising out of a pollution incident would be claims in the United States arising out of an incident in any of the contiguous waters, which is on the lakes, on the British Columbia coast and around the Bay of Fundy.

We are in a very difficult position in this regard. As Mr. Burke has pointed out, when the equivalent legislation was before the United States Congress an attempt was made to have a provision inserted that would allow for a compatible regime in the two countries. That was not accepted by the legislators in that country. I will discuss this with the minister and the draftsmen of the Department of Justice. There may be a possibility of inserting a provision to allow us to provide for compatibility between the two regimes.

Mr. Brisset suggested that we include a provision to incorporate article V, paragraph 5 of the Brussels Convention on civil liability. This would allow the shipowner or the cargo owner to claim his own expenses in taking preventive action or clean-up action out of his own pollution limitation fund.

I realize that the thinking behind this is that it would give an incentive to shipowners to take immediate action, so as to prevent a spread of the damage and thereby a greater catastrophe than would exist.

Senator Pearson: Would that not be left to the insurance company?

Mr. Macgillivray: Yes, senator; the insurance company would pay it, but it would be the shipowner.

Senator Pearson: The shipowner has to do the cleaning up.

Mr. Macgillivray: Well, whatever arrangement they make between themselves as to who actually hires the

salvage people and labourers, and so on, really does not matter for this purpose.

Senator Rattenbury: It might cost less.

Senator Flynn: It may, but if they spend all the money trying to remedy the damage and do not succeed, the real sufferers will get nothing.

Mr. Brissett: You will only recover the proportion, because let us assume you spent $1 million, the claims of $1 million, and the limit of $1 million, the claimants will receive half...

Senator Flynn: Only in proportion.

Mr. Brisset: Only in proportion.

Senator Flynn: 50 per cent.

Mr. Brisset: It all depends how the proportion works out.

Senator Flynn: I see. You do not suggest that they should be the first...

Mr. Brisset: No, no, they will rank equal to the other claims and recover 10 per cent as the others, or 20 or 50 per cent.

Senator Flynn: That seems more sensible.

Mr. Macgillivray: On this point the minister has said on a number of occasions that he was not satisfied with the results that came out of Brussels in the form of this convention and another.

There is perhaps a natural resistance, on the part of people who want to see that people who suffer damage are properly compensated, to find that when they do provide for setting up a fund to reimburse them, then the person who caused the damage is still going to have a share in that, to the detriment of those who are not going to be fully reimbursed.

The mere fact that that limitation applies will indicate that someone is not going to recover all his damages.

We did feel as to the whole tone of the convention that was produced in Brussels, that there was just too much of an effort there to protect the shipowners, sometimes at the expense of the people who are going to be damaged by the pollutions incidents.

However we will certainly be bringing this to the attention of the minister.

Mr. Brisset, by the way, in discussing that one, attributed to me that I had said that this was the intention in the beginning. I do not recall having said that. I am not certain that it ever was our intention to go along with that item in the Brussels Convention.

He also suggested, respecting Article VI, paragraph 1 of the convention that once a limitation fund is set up and the moneys are paid into court, that persons having a right arising out of the incident would only be able to recover from that fund and could not attack other assets of the shipowner.

This is purely a procedural matter, I think, and is one that I believe is already the practice in relation to limitation matter in other fields. Once the money is paid into court that is where the claims are satisfied from.

Senator Flynn: There is a limitation or there is none.

Mr. Macgillivray: Concerning Article VII, paragraph 8 of the convention, he suggests that the insurer should have the same defences as the insured. In previous discussions on this point with the officers of the Department of Justice, I have been informed that they feel those defences are there, that that is implicit in the act. I will raise the question again, in any event.

As to making arrangements with the United States for a situation that will occur when there is an accident in contiguous waters, I feel it is quite clear that such discussions will have to take place between the two governments. There is no question that we will be proceeding with those discussions as soon as time permits; but whether we could make any provision in the bill that would anticipate the results of these discussions is really another question.

Mr. Langelier, speaking for B.P. Oil Limited, spoke of section 744(1)(b) and in response to a question from yourself, Mr. Chairman, Senator Flynn said that the word "wholly" should be removed from line 29 on page 13 so that discharge of the pollution gave rise to the liability is "wholly" caused by these things should instead read "in whole or in part".

Senator Flynn: My suggestion was not as accurate as that. It was with respect to paragraph 2(i). It seems to me that an anachronism should cause a damage by a person other than any person for whom the wrongful act or omission. I did not like the idea of the intent to cause damage. Sometimes you do something which is a negligent act without intent to cause damage. It seems to me that the rule of responsibility for any fault should be recited therein and that the idea of the intent should be removed, because I may hit someboy without the intention of killing but if I do kill I have at least a civil responsibility if I have not a criminal responsibility.

Mr. Macgillivray: Here is where we get into one of the unique features of this legislation and one which I do not think we should depart from. It is, by the way, not the first occasion on which this type of liability has been imposed. The idea of absolute liability first came up in connection with nuclear ships ten years ago when an international convention on that subject was reached. Then there was legislation before Parliament a year ago, which was passed, I should say, dealing with liability for nuclear damage. The concept is that when there is a possibility of massive damage being done by a single incident you should focus liability on the one spot and on a person who can insure.

Where you have a 200,000 ton tanker posing such a threat to people and to the ecology, and it is quite clear that in an accident the damage could be the result of the negligent act of some person on board a 2,000 tons coasting vessel, the damage would be caused with the complete innocence of the owner of the tanker and of all the people aboard it. They might take all the precautions in the world.

Senator Flynn: You were saying that it would be a servant of the owner there?

Mr. Macgillivray: No, the owner and his servants are completely blameless. The accident is caused by the negligence of a third person. In that case, if we do not have some provision here requiring that the insurance be carried in some way tied in with that tanker and its cargo, then there will never be recovery because the owner of the 2,000 ton coaster is very unlikely to have sufficient assets. He is certainly not going to be carrying insurance in that amount. His liability is limited to half of the liability that is imposed here under the ordinary rules of liability and it is just not going to be his practice to carry liability insurance to cover himself for the type of damage he could do if collided with a supertanker.

So recognizing the practicalities at Brussels this was accepted by the shipowning nations, the nations that own these supertankers and that will be owning them. It is accepted by all concerned that you must have an artificial regime. This is what absolute or strict liability is. It is an artificial regime so that you can focus liability on the one spot where it can be insured.

This is why those exemptions that are shown in section 744 are there.

Senator Flynn: Is this a reproduction of the Brussels Convention?

Mr. Macgillivray: It is not verbatim, but it does contain the idea.

Senator Flynn: What if somebody comes aboard a tanker and deliberately sets fire to it or arranges to sink the vessel?

Mr. Macgillivray: You could conceive of sabotage, yes.

Senator Flynn: Sabotage, yes, for instance.

Mr. Macgillivray: That is an exemption.

Senator Flynn: That would be an exemption?

Mr. Macgillivray: Yes.

Senator Flynn: But if a tug, for instance, is badly steered and hits the vessel, that would not be a case where you would be exempted from your liability.

Mr. Macgillivray: No.

Senator Flynn: The distinction is rather artificial or strange, and is productive of rather contradictory results.

Mr. Macgillivray: This is one of the reasons we would have preferred at the Brussels Convention not to see this exception for an act of sabotage, but it is there and you do not always get what you want in these things. We would have preferred that there should be no exceptions.

Senator Flynn: This is a national law, is it not?

Mr. Macgillivray: That is true, but there is a question of how much we are laying ourselves open to danger because it seems pretty clear that any of these three exceptions are likely to be very rare in their occurrence.

Senator Flynn: Then you are supporting the idea that there should be uniformity of responsibility of all parties to the Brussels Convention?

Mr. Macgillivray: Well, we are, as the Minister has said, anxious to see a workable international regime in this field, yes, and, as you know, the other witnesses have said the work is now being done in an attempt to create an international claims fund. One of the series of meetings concluded on Friday last and they will be resumed next month. If a satisfactory international regime does come about, we will be glad to be in it, as the Minister has said.

Senator Flynn: And to amend the Act?

Mr. Macgillivray: Yes. I think Captain Hurcomb quoted him on that just a few minutes ago.

Mr. Langelier has also asked that the provisions relating to the fund be brought into force by proclamation so as to allow us to study the CRISTAL scheme, and he pointed out that CRISTAL would not be available to Canadians because of unlimited liability. I think it is clear there is limitation of liability in this bill and I did not quite understand that. However, this matter of bringing the fund provisions into force at a later date—this is a matter I will bring up with the Minister. As you probably know the CRISTAL scheme was not brought into being until after this bill was being considered before the committee of the House of Commons, and this is a thought that, of course, could not have occurred to us while the bill was being drafted.

Mr. Phillips has asked that there be an amendment so that claims for damage by pollutants other than oil would not be payable out of the fund until a scheme has been worked out for having payments into the fund in respect of such other pollutants. I cannot give any indication of what the position would be on that, but I will bring it to the attention of the Minister. He has also suggested that the fund should be subject to the same exceptions set forth in section 744, subsection (1), that is that recovery out of the fund should not be in respect of damage done as a result of these exceptions. But really, this is one of the purposes of the fund, that is to recognize that there will be cases where people will not have the right of action and will not have any way of collecting compensation for their damage. This is one of the purposes of setting up the fund and I think we would not be inclined to see any change in that aspect of the fund.

On the question of payments being made into the fund when oil is shipped more than once, my inclination is that the minister would probably not agree to a change in his regard because this is a question that has been considered before.

In conceiving the idea of this fund it was recognized that it is not going to be a perfect plan, but every time oil is shipped through our waters it is posing a new hazard. If it comes in as crude to Port Hawkesbury and is refined and then shipped again as stove oil, it is presenting a pollution hazard on both those voyages, so the decision was made it would pay on both those voyages. It is perhaps unfair that payment will be made in respect of a cargo of oil that may only travel 20 miles of

our waters while another cargo will go all the way from Montreal up in the lakes a considerable voyage. However, no scheme is going to be perfect, and it has been recognized that this may have an economic impact on the oil industry, and it has been one of the undertakings that before the Order in Council is passed setting the amount of the contribution to the fund there will be a study of the economics of it, and probably discussion with the industry.

He also suggested that there should be a limit put on the amount of the fund—let us say, $10 million. This is a matter that was recommended in the committee of the other place and it was brought to the attention of the minister and was not accepted. We just do not know how much the fund would be, and if it is only going to build up at the rate of a maximum of $3 million a year, even if the full 15 cents per ton is charged, I do not think it is likely to build into unduly high proportions before we would have a chance to revise the figure downwards for the amount of the contribution or to do away with the contribution for a period of time.

Captain Hurcomb suggested that the negligence of a third party should be an offence, which is the point we have just finished discussing, and I feel it would destroy the whole concept.

He calls for a right of action—and this question was brought up before also—by the cargo owner against the ship where the shipowner has been negligent, but Captain Hurcomb says that should only be if the shipowner is at fault. I have taken note of that and I am not sure, if both are carrying insurance and if there is fault on neither side, that it would not be preferable just to let the liability be equal if they both have the funds to pay.

I have already dealt with the question of compatibility with United States legislation. We do not require the provision in here that would allow us to negotiate with the USA. This can be done. We will be looking at the possibility of putting in a provision that would be equivalent to th one that Captain Hurcomb read as having been suggested before the United States committee.

On the question of proof of financial responsibility in respect of US ships passing through Canadian waters, we of course have the possibility of ships passing through our internal waters, through our lakes, or passing through our territorial sea off our coast. There certainly was the thought in our minds that we would have difficulty with the international community if we imposed on ships passing our coasts any requirements for paying into the fund. Any requirement to put up proof of financial responsibility would obviously be attacked by some people as an infringement of the right of innocent passage through a territorial sea, but the conditions are different when we speak of internal waters, and we will take a look at that aspect.

Senator Flynn: Whether or not we request this certificate, do you not agree that liability would be the same, and any government or any Canadian citizen could sue a ship which discharged a pollutant outside our waters but which caused damage to our shores or to our territory?

Mr. Macgillivray: There may be some difficulty over this, when we look at the application section, subsection 2 of section 736 on page 3. The regulations are intended to apply to Canadian waters other than Arctic waters and to ships within those waters.

I am not certain that that excludes a claim against a ship if the release of the oil is outside of our waters.

Senator Flynn: I can see that section 737 would not apply outside of Canadian territory, but section 743 does not make that distinction.

Mr. Macgillivray: I am not certain that this excludes claims against a ship where the incident causing the release takes place outside Canadian waters and the damage done by the pollutant occurs within Canada.

Senator Flynn: From the standpoint of enforcement of the bill I think this is a very important question. May I suggest that you inquire of the Department of Justice or from other officials the import of this section.

Mr. Macgillivray: Yes, sir; I will ask for legal opinion on that.

I believe I have dealt with all the points raised except those by Mr. Lewtas for Imperial Oil. To a certain extent I have dealt with the one in connection with section 744, where he suggested the addition of a subsection (6), to allow the owner to recover against the shipowner if the latter is negligent, although there is in his draft amendment a provision ...

Senator Rattenbury: To which one are you referring?

Mr. Macgillivray: It was a draft amendment suggested by Mr. Lewtas to section 744, a new subsection (6) to be added.

The Acting Chairman: It is in Schedule A.

Mr. Macgillivray: As he pointed out, if there is fault on the part of the shipowner or his employees and no fault on the part of the cargo owner, he feels that the cargo owner should be able to recover, have a right over against the shipowner for any damages he is forced to pay.

There is a point in his draft which I think might have implications of which I am not too clear. He says in the draft that this would be unaffected by any provision in any charter or contract entered into before the coming into force of this subsection. This would have the effect of amending existing charter parties which might have been entered into under the law of and in a different country. I am not sure what the implications would be; this would require careful study.

His other point is a proposed amendment to section 744 (4), the addition of wording to subparagraph (d) to indicate that where the shipowner loses his right to limitation by reason of his personal fault or his being privy to the fault of his employees, the cargo owner should not lose his right of limitation. This, on the face of it, sounds reasonable.

Senator Flynn: That is not my interpretation of the former amendment to section 744(6). I think what is

proposed here is that the owner of the cargo has a right to recover from the shipowner, even if the shipowner is not faulty or negligent. This right does not depend upon proof of fault or negligence.

Mr. Macgillivray: Yes; this was the point that Captain Hurcomb questioned.

Senator Flynn: I was suggesting that at least there should be fault or negligence on the part of the owner, but, of course, this would be restricted to some extent if the shipowner had the right to invoke the limitation of the liability. It could be affected by that.

I have made a note that I find it difficult to understand the statement on page 4 of the paper submitted by B.P. Oil Limited:

> Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund...

I question whether this is so, until such time as the regulations are made setting up the claims fund and requiring payments to be made into it. Until payments are made into the claims fund it is not in existence.

Senator Rattenbury: Most of my questions have been answered, and Mr. MacGillivray has made notes of them. I find myself in agreement with Mr. Phillips in many instances in his submission, particularly from his viewpoint where they are cargo owners rather than owners of ships. It is not clear to me why so much stress has been made in this legislation by the drafters on the liability of the owners of the cargo, where you have double liability. Is there a need for that double liability?

Senator Flynn: Because of the dangerous nature of the cargo—a sort of joint venture.

Senator Rattenbury: And/or, but not necessarily both. Again I am unsure in my mind as to why the drafters of the legislation had confined the pollutant to oil and petroleum and not chemicals or other possible pollutants.

The Acting Chairman: That question could be answered at the next meeting, Senator Rattenbury.

Senator Flynn: The Governor in Council may make regulations on any one or more of the pollutants specified.

Mr. Macgillivray: Well, we already have regulations regarding oil. We are now working on regulations for sewage and garbage.

Senator Rattenbury: At any rate the fund is certainly limited to oil.

Mr. Macgillivray: There is provision that regulations may be made extending the obligation to pay the levy, and that may be extended to other pollutants besides oil.

Senator Rattenbury: It may be?

Mr. Macgillivray: Yes.

Senator Rattenbury: I might say that I found myself in agreement with one of the witnesses who pointed out that the establishment of CRISTAL was taking place on April 1 and that perhaps those applicable sections of the bill could be proclaimed. Those are my main questions, Mr. Chairman.

The Acting Chairman: Thank you, Senator Rattenbury. I am sure that Mr. Macgillivray will have the answers to those points at the next meeting.

If it is convenient to members of the committee, could we have our next meeting next Wednesday at 10 o'clock in the morning?

Hon. Senators: Agreed.

The committee adjourned.

APPENDIX "A"

PROPOSED AMENDMENTS TO BILL C-2

I

Add the following Sub-sections to Section 744

"6) Where any civil liability is alleged to have been incurred under Section 743 by the person or persons described in paragraphs a) or b) of Sub-section 4 hereof and where such liability is limited under paragraph c) of said Sub-section 4 and several claims are made or apprehended in respect of that liability a Judge of the Federal Court may, on the application of that person or persons, determine the amount of his or their liability and distribute that amount reteably among the several claimants; such Judge may stay any proceedings pending in any Court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the person or persons described in paragraphs a) or b) of Sub-section 4 hereof, and as to payment of any costs, as the Court thinks just. In making a distribution under this Sub-section of the amount determined to be the liability of the person or persons described in paragraphs a) or b) of Sub-section 4 hereof, the Court may, having regard to any claim that may subsequently be established before a Court outside of Canada in respect of that liability, postpone the distribution of such part of the amount as it deems appropriate."

"7) If before the Fund is distributed the person or persons described in paragraphs a) or b) of Sub-section 4 hereof or any of their servants or agents or any person or persons providing them insurance or other evidence of financial responsibility have as a result of a discharge of pollutant in waters to which this Part applies paid compensation for actual loss or damage incurred by those referred to in paragraph d) of Sub-section 1 of Section 743, such person or persons shall, up to the amount they have paid, acquire by subrogation the rights which those so compensated would have enjoyed under Section 743; claims in respect of costs and expenses reasonably incurred or sacrifices reasonably made by the person or persons referred to in paragraphs a) or b) of Sub-section 4 hereof voluntarily to prevent or minimize pollution damage shall, if they were incidental to the taking of any action authorized by the Governor-in-Council under Section 743 rank equally with other claims against the Fund."

"8) Where the person or persons described in paragraphs a) or b) of Sub-section 4 hereof after the discharge of a pollutant in waters to which this Part applies, have constituted a Fund in accordance with Sub-section 6 hereof and are entitled to limit their liability,

a) no one having a claim under paragraph c) or d) of Sub-section 1 of Section 743 arising out of the discharge of a pollutant in waters to which this Part applies shall be entitled to exercice any right against any other assets of that person or persons in respect of such claim.

b) the Court shall order the release of any ship or other property belonging to that person or persons which has been arrested in respect of a claim for their costs and expenses and the actual loss or damage referred to in Section 743 arising out of that incident and shall similarly release any bail or other security furnished to avoid such arrest."

The following should be added to Section 745 at the end of Sub-section 2

"In such case the Defendant may, irrespective of the actual fault or privity of the owner of the ship or of the owner of the pollutant as described in paragraphs a) or b) of Sub-section 1 hereof avail himself of the limits of liability prescribed in Sub-section 4 of Section 744. He may further avail himself of the defences which the owner of the ship or the owner of the pollutant would have been entitled to invoke under Sub-section 1 of Section 744. Furthermore, the Defendant may avail himself of the defences that the pollution damage resulted from wilful misconduct of the owner of the ship himself or the owner of the pollutant, but the Defendant shall not avail himself of any other defences which he might have been entitled to invoke in proceedings brought by the owner of the ship or the owner of the pollutant against him. The Defendant shall, in any event, have the right to require the owner of the ship or the owner of the pollutant or both as the case may be to be joined in the proceedings."

3. "The insurer or other person providing evidence of financial security shall be entitled to constitute a Fund in accordance with Sub-section 6 of Section 744 on the same conditions and having the same effect as if it were constituted by the person or persons referred to therein. Such a Fund may be constituted even in the event of the actual fault or privity of that person or persons but its constitution shall in that case not prejudice the rights of any claimant against that person or persons."

APPENDIX "B"

BRIEF of The Petroleum Association for the Conservation of the Canadian Environment (PACE)
To the Special Committee of the House of Commons on Environmental Pollution, in connection with Bill C-2, an Act to amend the Canada Shipping Act

PACE

1. PACE is an Association of the following Canadian oil companies:

BP Oil Limited
Golden Eagle Canada Limited
Gulf Oil Canada Limited
Husky Oil Ltd.
Imperial Oil Limited
Irving Oil Company Limited
Pacific Petroleums Ltd.
Petrofina Canada Ltd.
Shell Canada Limited
Standard Oil Company of British Columbia Limited
Sun Oil Company Limited
Texaco Canada Limited

The objects of the Association are set out in Schedule A, but briefly they are to deal with environmental problems pertaining to the petroleum industry.

2. The members of the Association account for over 90 per cent of all imports and of all domestic marine shipments of oil products. Of equal significance in influencing their approach to Canadian environmental problems is the fact that these companies represent—through their employees, dealers and agents—over 90,000 families living in this country.

3. The companies have shown their concern about the Canadian environment not only by their establishment of this Association but also, and more tangibly, by anti-pollution expenditures over the last five years totalling more than $90,000,000. It is in this spirit that they have considered Bill C-2, but from their collective experience with problems of this nature they regard it as their responsibility to remind the members of this Committee that to an oil company the costs of pollution control are costs of production, which in our competitive economic system are inevitably reflected in the prices of petroleum products. In estimating the economic effect of this Bill none of us can overlook its impact on the Canadians who use petroleum products.

Association's Interest

4. The members of this Association support the objectives of Bill C-2. They wish to stress in particular the importance of prevention of accidental discharge as the best method of combatting oil pollution, and for this purpose they pledge their cooperation with all reasonable regulations designed to impose high standards of equipment and procedures. They would go further and propose the preparation of a national contingency plan, to ensure that in the event of a major incident there could be immediately deployed the most effective combination of personnel, material and techniques—contributed by both government and industry.

5. The Association also agrees that the Bill's compensation provisions should be comprehensive in their coverage, and provide reimbursement for all direct losses and expenses—including clean-up costs—caused by a pollution incident. It is the proposed method of implementing this compensation which causes us concern—and the following sections of this Brief will explain the reasons for that concern.

6. Although most of the members of this Association also have interests in ships as owners or charterers, their submissions will be as cargo owners, and the Brief will restrict its comments on the Bill accordingly. This restriction, however, in no way diminishes the importance of the matters to be covered by the Brief. The companies recognize that cargo owners are the subject of the very provisions of this Bill which distinguish it as such a radical innovation in maritime law—the provisions which would subject cargo owners to financial responsibility for damages caused to others by disasters at sea.

Insurance

7. This Brief makes a necessary assumption in connection with insurance. The development over the years of world shipping has depended on a concurrent evolution of maritime insurance. No sensible shipowner would commence a voyage unless fully insured. We understand that the insurance industry has already made representations to this Committee to the effect that tankers will be uninsurable in Canadian waters unless the liabilities imposed on shipowners by the proposed new sections 743 and 744 are modified as they suggest. As the most equitable method of sharing the burden is through the insurance carried by shipowners, we recommend that none of the suggested modifications be made unless the need for it is clearly established. However, we must assume that any modifications which are in fact proven to be necessary will be made. Any other result would be extremely detrimental to the Canadian petroleum industry, for it is most unlikely that a tanker will make an uninsured voyage into Canadian waters.

Nature of Submission

8. Bill C-2 adopts the principle—and in this regard goes significantly beyond any applicable international convention—that victims of marine pollution must receive full compensation. Shipowners will bear a heavy responsibility, but of necessity only up to the amounts to which they may limit their liability under traditional maritime law principles (and in this connection we understand that the Bill's present limitation provision will be modified so as to adopt the historical "fault or privity" language). In addition, and to achieve the full compensation principle, the Bill proposes contributions by cargo owners, through two radically new liability concepts:

Primary Cargo Liability

The Primary Cargo Liability would mean that to victims of pollution the cargo owner would have the same liability as the shipowner, on a joint and several basis.

Secondary Cargo Liability

The Secondary Cargo Liability would mean that cargo owners would maintain a Maritime Pollution Claims Fund in order to ensure full compensation to the extent that it is not obtained from the shipowner, or from the cargo owner under the Primary Liability.

Primary Cargo Liability

9. As stated earlier, the members of this Association support the compensation objectives of Bill C-2. However, they do not believe that in the attainment of these objectives there is any use for the Primary Cargo Liability, which they regard as wrong in principle, unnecessary and impracticable.

(1) The Primary Cargo Liability is wrong in principle, in that direct liability for damages to others is imposed upon the owner of a cargo who before the commencement of the voyage ceased to have any control over the cargo let alone the ship. As a matter of principle also, if the petroleum industry is to be subjected to responsibility irrespective of fault, that responsibility should be borne by the companies in the industry in logically allocated shares. The liability of any single company should depend on its overall usage of marine transport rather than on the coincidence that one of its cargoes happened to be carried by a particular ship at a particular time. To attempt to justify the liability—as was suggested before this Committee by an official of the Department of Transport—on the ground...

"...that some incentive should be put on the charterers of ships to select safer ships...

demonstrates a remarkable lack of familiarity with world chartering markets, where all ships offered are correctly assumed to be insured and therefore officially classed as seaworthy and where the essential skill of charterers is to consider expeditiously all the relevant factors and to select the correct ship without the opportunity of actual inspection. It is the executive branch of government which should be encouraged in the enforcement of the special safety and financial responsibility requirements stipulated by the Bill. Moreover, the ability to shift part of his burden on a cargo owner could only tend to remove the safety incentives of the shipowner, who is uniquely in a position to maintain high standards for his ship and crew.

(2) The Primary Cargo Liability is unnecessary, for the other provisions of the Bill ensure that for all practical purposes in any disaster the shipowner will in fact pay the damages for which he is responsible—up to the statutory limit of his liability. Up to this amount he is certain to be insured—not only by universal shipping practice but also because under the proposed section 745 he is required to prove that he is so insured.

(3) The Primary Cargo Liability is impracticable, in that it will fail to achieve equity or consistency in the apportionment of financial responsibility among the various parties involved:

(a) The Bill contains no specific provision entitling a cargo owner who has made a payment under the proposed section 743 to seek reimbursement from the shipowner. It is difficult to understand why the section should not give an unqualified right to such reimbursement, not only because of the cargo owner's lack of control over the conduct of the voyage,but also because the entire liability under the section will already be insured by the shipowner in any event.

(b) Under the proposed section 743 the liability of the cargo owner—a completely passive party—varies with the ability of the shipowner to limit his liability. There is no discernible reason why the question of the "fault or privity" of the shipowner should affect the cargo owner's position.

(c) The principle of absolute or near absolute liability would expose a single oil company to liabilities which upon proper social grounds should not be borne by a faultless party. For example, if a pollution disaster results from the failure of a government-owned navigational aid, it is unreasonable that an individual oil company rather than the government should be responsible for the damages—yet this could happen if the company's claim over against the government were successfully defended by the government's invoking one of the normal liability exceptions.

Secondary Cargo Liability

10. For reasons indicated above, if oil companies are to be required to make contributions in respect of marine pollution, the most equitable procedure would be by way of payments into a fund, in substitution for and not in addition to the Primary Cargo Liability. The Association regrets that for this purpose Canada could not wait for the conclusion of a satisfactory international convention, which because of multinational participation would greatly reduce the payments required to be made by each company and would eliminate vexatious problems of jurisdiction and duplication.

11. In any event, the Association offers the following comments on the Maritime Pollution Claims Fund proposed by the Bill:

(1) Although the Fund is to be available for compensation for damages caused by any pollutant, its contributors will be owners of oil cargoes only. To avoid this obvious injustice, the Bill should be amended either to provide for contributions by owners of cargoes of pollutants other than oil and by shipowners whose ships carry substantial bunkers or that the Fund be not available for disasters caused by those pollutants.

(2) The new legislation should specify a maximum amount for the Fund. Experience would indicate that $10,000,000 would be adequate for this purpose.

(3) In order that funds which might be put to good use by Canadian industry are not kept idle in government accounts, a system should be devised whereby companies of proven financial responsibility need only be subject to a non-interest-bearing obligation

to make payments to the Fund as required to meet the purposes of the Fund obligations.

(4) If contributions to the Fund are to be computed on the basis of cargoes shipped, there should be an annual cumulative adjustment of the liablities of the various oil companies, so that the contributions in respect of each accident will truly reflect the respective uses of marine transport by the companies.

(5) The statute should more clearly describe inland voyages for the purposes of Fund contributions, so that one voyage will not be construed as several merely because of stopovers at intermediate points.

(6) If as a result of the representations by the marine insurance industry there are to be exceptions to the absolute nature of the liability to be imposed upon shipowners, the same exceptions should apply to liability on the part of the Fund. Otherwise the result would be that obligations proven to be too onerous for the insurers of the world would be imposed through operation of the Fund on the petroleum users of Canada. Moreover, these exceptions—such as acts of war, negligence of governments, wilful damage by third parties, etc.—are of such a nature that where they are invoked the damages should be borne by the community as a whole rather than by any particular section of it.

12. Before leaving our discussion of the proposed Fund we should remind the Committee that the world petroleum industry appears to be close to establishing a voluntary pollution fund of its own, through contributions by the various oil companies and to supplement where necessary the primary liability of the tanker owner. When this arrangement—to be known as CRISTAL—comes into effect it will probably afford greater coverage at lower cost than that of the Bill's Secondary Cargo Liability—therefore might be a useful object of study by this Committee before it recommends enactment of single-country legislation as radical as that contained in the Bill, and which may turn out to be merely a duplication of other coverage.

Conclusion

13. This Association therefore respectfully submits that Bill C-2 should be revised before enactment as follows:

(1) the proposed sections 743 and 744 should be amended to eliminate the Primary Cargo Liability; and

(2) the provisions of the Bill embodying the Secondary Cargo Liability through the Maritime Pollution Claims Fund should be amended as indicated in section 11 of this Brief;

and that in any event the Secondary Cargo Liability provisions should be enacted as temporary legislation only, pending the adoption of a satisfactory international convention or oil industry agreement designed to achieve comparable results.

This Association wishes also to commend the authorities in their stated intention to consult with industry representatives before settling the text of any regulations to be issued under the proposed new legislation. And in conclusion we refer to our earlier proposal for a national contingency plan, reaffirm our conviction as to its importance, and emphasize that to bring it into existence our members stand ready to extend every cooperation to the government.

Respectfully submitted,
THE PETROLEUM ASSOCIATION FOR THE CONSERVATION OF THE CANADIAN ENVIRONMENT
By:
President

Toronto, Ontario
November 30, 1970.

SCHEDULE A

Objectives of PACE

(a) To co-ordinate efforts within the oil industry in situations where joint action is the most effective method of solving environmental problems and where contingency plans to prevent or reduce damage to the environment from their operations are deemed to be desirable;

(b) to encourage exchange of technical information which will foster environmental improvements and develop support for research into new technology in environmental and ecological fields; and

(c) to provide a point of industry contact for the public and governments in all matters related to the protection of the environment and to assist government where appropriate in the formulation of policy and regulations concerning environmental protection as related to the oil industry.

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Memorandum for Senate Committee on Transportation and Communications

It is submitted that in order to give proper effect to the intent of Bill C-2, as passed by the House of Commons on March 1, 1971, the following two changes are necessary:

1. A cargo owner who is required to pay damages for pollution should have a right to reimbursement from the owner of the ship which carried the cargo. For this purpose section 744 should be amended by deleting the last five lines of subsection (1) and adding a new subsection (6), as set out in Schedule A hereto.

2. The Bill now provides that the "fault of privity" of the shipowner will deprive the cargo owner of his right to limit his liability. The liability of the cargo owner should not vary according to the personal blameworthiness of a shipowner over whose conduct the cargo owner has no control. Section 744 should therefore be amended by an addition to subsection (4) (d) as set out in Schedule B hereto, in order to provide that the cargo owner may limit his liability except where there has been fault or privity on the part of the cargo owner himself.

SCHEDULE A

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Proposed New Section 744(6)

744. (6) An owner of a pollutant from whom any costs, expenses, loss or damage are directly recovered pursuant

to section 743 has the right in turn to recover the same from any owner of a ship who was jointly and severally liable therefor under the said section, and such right does not depend upon proof of fault or negligence on the part of the owner of the ship and is unaffected by any provision in any charter or contract entered into before the coming into force of this subsection. Nothing in this Part shall be construed as limiting or restricting any other right of recourse that a person liable pursuant to section 743 may have against any other person.

SCHEDULE B

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Proposed Addition to Section 744(4) (d)

except that if, in the case of an incident resulting in the joint and several liability of persons described in paragraph (b), there shall have been such actual fault or privity on the part of one but not all of such persons, the amount recoverable directly from any such person on whose part there shall have been no such actual fault or privity shall be determined as though paragraph (c) were applicable,

APPENDIX "C"

IN THE MATTER OF BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Remarks submitted by BP Oil Limited to the Standing Committee of the Senate of Canada on Transport and Communications

SECTIONS 743 AND 744: LIMITATIONS ON LIABILITY

1. The cargo owners, under the provisions of Sections 743 and 744 of Bill C-2, may be made liable for an amount up to $14 million for each separate incident in respect of various costs and expenses, including all actual loss or damage sustained by the Crown or by any other person resulting from the discharge of a pollutant in the absence of any actual fault or privity on the part of the ship and to an unlimited amount in the event of actual fault or privity.

Apart from what we consider to be the serious inequity of placing such an onerous liability upon the cargo owner, we understand that he will be faced with the virtual impossibility of obtaining insurance for such unlimited liability, especially as the shipowners themselves will be unable to obtain such insurance in the first place. We take this opportunity to refer in passing to the statement made by the representative of the London Group of Protection and Indemnity Associations before the Special Committee of the House of Commons on Environmental Pollution on November 24, 1970 and reported in Issue No. 6:58 of the Minutes of Proceedings and Evidence of the Committee, which reads in part as follows:

> "...We repeat that the capacity of the world insurance market for oil pollution risks is limited in respect of each vessel any one accdent or occurrence, to approximately $14,000,000.00 U.S., ... therefore Bill C-2 as it stands even in isolation could not be fully insured."

Honourable Senators might recall the testimony of Mr. P. N. Miller, of London, England, called as a special witness before your Standing Committee on Transport and Communications on February 27, 1969 (No. 6 First Proceedings on Bill S-23, intituled: An Act to amend the Canada Shipping Act), who stated unequivocally as follows:

> "Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between $10 to $15 million—somewhere in that region—but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability."

Mr. Miller further states:

> "Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability. From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself—an additional liability of between $10 million to $15 million or somewhere between $71 and $100 per gross ton.
>
> "It is not that we do not want to insure it. It is simply that we cannot go beyond a certain figure."

Should you still deem fit, notwithstanding the representations made by the world insurance market, to hold cargo owners jointly and severally liable for occurrences such as are covered by Bill C-2, and this despite the various objections which have been made to this radical concept of placing liability on passive cargo; unequivocal provisions should be made affording the cargo owner the right to seek reimbursement from a shipowner when the latter is proven to be at fault, as the present wording of the last paragraph of Section 744(1) still leaves great room for doubt.

We welcome, under subparagraph (b) of Section 744(1), the inclusion of exceptions to liability drawn along the lines of those contained in the 1969 International Convention on Civil Liability for Oil Pollution Damage, but we note that shipowners and cargo owners could only plead in defense such exceptions when the discharge of the pollutant which gave rise to the liability was wholly caused by the occurrences set forth in subparagraph (b)(i), (ii) and (iii), but not when there has been contributory negligence even to the slightest degree. It is therefore our suggestion that Section 744(1)(b) be amended to provide for such an occurrence.

SECTION 745 (1): EVIDENCE OF FINANCIAL RESPONSIBILITY

2. Section 745(1) requires that evidence of financial responsibility satisfactory to the Minister of Transport be furnished by the owner of the pollutant in addition to the owner of the ship that carries such pollutant in bulk to or from any place in Canada. We submit that the necessity for liability to be placed upon the cargo owner or for the requirement for him to furnish evidence of financial responsibility to cover the same risk as that of the shipowner, is not only inequitable and unjust but unnecessary duplication.

SECTION 746: MARITIME POLLUTION CLAIMS FUND

3. We recognize that Canada did not wish to wait for the conclusion of a satisfactory international convention on liability arising from damage caused by spills of petroleum products, because possibly of the delays which may be involved in its ratification by the maritime nations of the w orld. We would have thought that because of its multinational participation, such a convention would have repaired the attention of our legislators as it would greatly reduce the payments required to be

made by each company and would eliminate vexatious problems of jurisdiction and duplication. Be that as it may, the world petroleum industry showed a high degree of responsibility in also recognizing that pending the coming into force of the international convention, dealing with tanker owner liability for oil spills and a supplementary fund supported by cargo interests it was not only important but urgent to establish an interim measures fund of its own to discharge the liabilities that might arise from oil spill accidents.

The creation of an oil industry voluntary fund known as CRISTAL (Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution), has now been announced, whereby the new cargo owners' agreement extends the total dollar amount of coverage for each separate oil spill to $30 million, which can be paid to private individuals and corporations, both public and private, as well as to governments. This agreement, which has been signed by the leading oil companies of the world, will be effective April 1, 1971. It supplements the already existing and operating voluntary fund called TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Pollution). These two funds are open to all tanker owners and oil companies and in fact count as their members the major tanker owners and oil companies of the world.

We urge that these funds be studied closely, particularly with regard to the advantages that they offer in relation to the availability of compensation for claims for pollution damage up to an aggregate limit of $30 million, so that no necessity arises for either an initial build-up of cash or a further accumulation after a claim has been settled, and the substantially lower costs that would be placed upon the Canadian economy. We suggest that the oil industry has met the challenge to which it has been exposed and should not be penalized as it is under the provisions of Section 757(1). Payments to the Maritime Pollution Claims Fund should accordingly be made only by those others who ship pollutants into or in Canada in builk as a cargo of a ship and who are not members of the voluntary CRISTAL fund.

If, however, Bill C-2 should be enacted in its present form, CRISTAL will not respond to claims for pollution damage from persons in Canada. This situation stems from the fact that, under Clause IV(b) of the CRISTAL agreement, the compensation available is reduced, inter alia, by the amount to which persons sustaining pollution damage are entitled under applicable law and the fact that Bill C-2 essentially provides for entitlement to unlimited compensation from the shipowner and/or the cargo owner and the Maritime Pollution Claims Fund. Equally, the CRISTAL fund will not be available to reimburse Canadian cargo owners who may incur liabilities under Bill C-2, since the fund is designed to respond only to claims from persons who sustain pollution damage.

Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund and, in effect, means that the full costs of providing compensation for incidents in Canadian jurisdiction will have to be borne by Canadians, rather than being spread across the entire world.

We further suggest that provision might be made for Sections 746 to 760 of Bill C-2 dealing with the Maritime Pollution Claims Fund to be proclaimed law at a different time from that of the other provisions of the Bill. In doing so, the implementation of those sections might be delayed to give the Government an opportunity to see CRISTAL in operation and then determine whether it might be acceptable for Canadian requirements as an interim measure pending ratification of an international convention.

Respectfully submitted,
BP OIL LIMITED — BP PÉTROLES LIMITÉE
Jean Langelier, Q.C.
Vice-President, Secretary and General Counsel

"CRISTAL"

Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution

Preamble

The Parties to this Contract are various Oil Companies and the Oil Companies Institute For Marine Pollution Compensation Limited, an entity organized and existing under the Laws of Burmuda (hereinafter referred to as the "Institute").

The Parties recognise that marine casualties involving tankers carrying bulk oil cargoes can, on occasion, cause extensive pollution damage on the escape or discharge of oil into the sea. They believe that by increasing the responsibility of tanker owners with respect to pollution damage, the occurrence of such incidents can be reduced, and therefore they strongly favour ratification by the nations of the world of the International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on November 29, 1969 (hereinafter referred to as "CLC").

The Parties further recognise that in some instances persons sustaining pollution damage may be unable, even after ratification of CLC, (as under current legal regimes), to recover adequate compensation for pollution damage.

The Parties accordingly advocate, in addition to ratification of CLC, the adoption and ratification by the nations of the world of a Convention creating an International Compensation Fund or its equivalent whereby persons who sustain pollution damage for which a tanker owner is liable under CLC would have available supplemental compensation beyond the limits established in CLC. Moreover, the Parties have decided, pending the enactment of such a Convention, to establish by contract a means for providing supplemental compensation for pollution damage beyond the limits of liability presently available underexisting legal regimes, including Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution ("TOVALOP"), and beyond the limits of liability that will be applicable under CLC, once it enters into force.

In view of the above considerations, the Parties who, as of this 14th day of January, 1971, have executed this Contract and those Oil Companies who later become Parties, have agreed, and do hereby agree, that the Institute will pay such supplemental compensation and that

the Oil Company Parties will assure the availability of funds to permit payment thereof, upon the following terms and conditions:

I. *Definitions.*

For the purpose of this Contract, including the Preamble:

(A)—"Tanker" or "Ship" means any sea-going vessel and any sea-borne craft of any type whatsover, actually carrying oil in bulk as cargo.

(B)—"Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

(C)—"Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owing the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "Owner" shall mean such company.

(D)—"Oil" means any persistent oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil whether carried on board a ship as cargo or in the bunkers of a ship.

(E)—"Pollution Damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that said loss or damage is caused on the territory including the territorial sea, of any nation, and includes the costs of preventive measures and further loss or damage directly resulting from such preventive measures but shall exclude any loss or damage which is remote, or speculative, or which does not result directly from the escape or discharge.

(F)—"Preventive Measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimise pollution damage.

(G)—"Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage.

(H)—"Oil Company" means any person engaged in the production, refining or marketing of oil, or whose affiliates are so engaged.

(I)—"Crude/Fuel Oil Receipts" means crude oil received by an Oil Company at refineries for processing which was transported all or part of the way from point of origin to said refineries by ship, and fuel oil received by it at an installation for storage and terminalling which was transported all or part of the way from point of manufacture to said installation by ship.

(J)—"Contract Year" means any twelve month period commencing upon the Effective Date [as referred to in Vlause III(A) hereof] or any anniversary thereof.

(K)—"Oil Company Party" means (i) any Oil Company which is an initial signatory to this Contract, including an Oil Company which is affiliated with such Company and which, prior to the Effective Date, is designated by such Company as desiring to become a Party, and (ii) any Oil Company which becomes a Party upon acceptance of an application signed by it pursuant to Clause II (B) hereof, including any Oil Company which is affiliated with such Company and which, at the time of such application, is designated by such Company as desiring to become a Party.

II. *General Conditions.*

(A)—Any Oil Company in the world which is willing to be bound by this Contract and to become a shareholder in the Institute and to abide by its By-Laws, Rules and Directives, may become an Oil Company Party to this Contract.

(B)—An Oil Company which is not one of the initial signatories to this Contract or was not designated by an initial signatory as desiring to become a Party, will become an Oil Company Party to this Contract upon acceptance by the Institute of an application in the form attached hereto as "Exhibit A".

(C)—The obligations of an Oil Company under this Contract shall extend solely to the Institute.

III. *Effective Date and Duration.*

(A)—This Contract shall come in effect upon a date selected and announced by the Institute to its shareholders (herein referred to as the "Effective Date") which shall be as early as is practicable after the Institute determines that the total of all Crude/Fuel Oil Receipts, during the calendar year first preceding the calendar year in which such determination is made, of all Oil Companies which are Parties to this Contract as of the time of said determination, constitute at least 50% of the Crude/Fuel Oil Receipts of all Oil Companies during such preceding year.

(B)—(i) Each Oil Company which becomes a Party hereto prior to October 6, 1974 shall be bound by the provisions hereof from the date in becomes a Party until October 6, 1974 and thereafter for successive periods of one year from said October 6, 1974 unless it gives written notice of withdrawal to the Institute prior to April 1, 1974 or prior to April 1 in any such successive yearly period, said withdrawal being effective as of October 6th following the date on which notice has been so given.

(ii) Each Oil Company which becomes a Party hereto after October 6, 1974 shall be bound by the provisions hereof from the date it becomes a Party until October 6 next following the date it becomes a Party and thereafter for successive periods of one year commencing on said October 6, 1974 and each anniversary thereof unless it gives written notice of withdrawal to the Institute prior to April 1 of any such yearly period, said withdrawal being effective as of October 6 following the date upon which notice has been so given.

(C)—Notwithstanding the provisions of Clause III (B) hereof—

(1) This Contract shall terminate (i) at the end of two Contract Years from the Effective Date unless at any time within that two Contract Year period the Institute determines and announces to its shareholders that the total of all Crude/Fuel Oil Receipts, during the calendar year first preceding the calendar year in which the determination is made, of Oil Companies which are Parties to this Contract as of the time of such determination, constitute at least 80% of the total Crude/Fuel Oil Receipts of all Oil

Companies during such preceding calendar year, or (ii) upon the termination of TOVALOP before CLC comes into force, or (iii) at the time a Convention comes into force creating an International Compensation Fund or its equivalent.

(2) This Contract may be terminated, at the discretion of the Institute at the end of five Contract Years from the Effective Date if CLC has not come into force prior to that time.

(D)—Termination of this Contract under this Clause III or otherwise shall not terminate the rights and obligations of any Party already accrued hereunder.

IV. *Functions of the Institute.*

(A)—After the Effective Date, the Institute shall compensate persons for pollution damage sustained by them as the result of an incident when at the time of the incident the oil was owned by an Oil Company Party as follows:

(1) Prior to the time CLC enters into force, whenever (i) the Owner or Bareboat Charterer of the ship from which the oil escaped or was discharged was a Party to TOVALOP at the time of the incident and (ii) the Owner of said ship would have been liable to said persons sustaining pollution damage under the provisions of CLC for the damage if CLC had been in force at the time of the incident and had been applicable to the incident.

(2) After the time CLC comes into force whenever the provisions of CLC apply to the incident, and by reason thereof the Owner of the ship from which the oil escaped or was discharged was, in fact, liable to said persons sustaining pollution damage for said damage.

(B)—The compensation to be paid by the Institute under Clause IV (A) to all persons sustaining pollution damage as a result of said incident (regardless of the number of ships from which oil has escaped or been discharged) shall in no event exceed Thirty Million U.S. Dollars (U.S. $30,000,000.00) less the sum of the following:

(1) The Owner's or Bareboat Charterer's maximum liability for said pollution damage under TOVALOP, *plus*

(2) The amount of expenditures that the Owner or Bareboat Charterer was entitled to make for "Removal of Oil" (as defined in TOVALOP) and to receive reimbursement for as provided in TOVALOP, *plus*

(3) The maximum liability of Owner or Bareboat Charterer with respect to such damage under applicable law, statutes, regulations or conventions, *plus*

(4) The maximum amount to which such persons sustaining pollution damage were entitled from any other person or from the ship or from any other vessel under applicable law, statutes, regulations or conventions providing for compensation for all or part of said damage.

(C)—If the total pollution damage resulting from an incident exceeds the net amount referred to in Clause IV (B), then said net amount shall be prorated by the Institute among the persons sustaining said damage.

(D)—Notwithstanding the foregoing, if a person sustaining pollution damage fails to exercise due diligence to recover compensation for such damage from (i) the Owner or Bareboat Charterer of the ship from which the escape or discharge of oil occurred, or (ii) any other person, or (iii) the ship or any other vessel, then to the extent that said Owner, Bareboat Charterer, person, ship or other vessel are liable for part or all of said damage, the Institute shall not compensate said person sustaining pollution damage under this Clause IV.

(E)—The net amount provided for in Clause IV(B) shall be reduced by any amounts paid, or agreed to be paid, by the Institute in settlement of claims made under this Contract.

V. *The Fund.*

The Institute, in order to assure its financial capability to pay compensation under Clause IV hereof, shall maintain and administer a Fund created as follows:

(1) The Fund shall initially be consituted in the amount of Five Million U. S. Dollars (U. S. $5,000,000.00) (hereinafter referred to as the "Initial Call").

(2) As soon as practicable after the Effective Date the Institute shall assess each Oil Company Party to this Contract as of the Effective Date and each such Party shall pay to the Institute that portion of the Initial Call calculated by dividing its total Crude/Fuel Oil Receipts for the calendar year immediately preceding the Effective Date by the total Crude/Fuel Oil Receipts during such preceding calendar year of all Oil Companies who were Parties to this Contract at the Effective Date and by multiplying this percentage by said Initial Call.

(3) Any Oil Company becoming a Party to this Contract subsequent to the Effective Date shall be assessed by the Institute and shall pay to the Institute that portion of the Initial Call calculated in the same manner as under Clause V(2). At such time appropriate adjustment shall be made in the portion of the Initial Call of all Oil Companies then Parties to this Contract and, at the discretion of the Institute, such Oil Companies shall receive an appropriate refund or a credit against future assessments.

(4) The Institute shall, from time to time during each Contract Year estimate the amount reasonably required by it to pay compensation in accordance with Clause IV and shall determine what portion of such amount ("such amount" being hereinafter referred to as "Periodic Call"), shall be in cash and what portion shall be in other forms.

(5) The Institute shall, at such times as are appropriate during each Contract Year, assess each Oil Company Party and each such Party shall pay to the Institute that portion of any Periodic Call made during said Contract Year calculated by dividing its total Crude/Fuel Oil Receipts for the calendar year first preceding the commencement of said Contract Year by the total of the Crude/Fuel Oil Receipts during such preceding calendar year of all Oil Companies who were Parties to this Contract as the date of such assessment and by multiplying this percentage by the amount of said Periodic Call, provided

however, that notwithstanding the foregoing, (i) each such Oil Company Party (whether or not it had any Crude/Fuel Oil Receipts in such preceding calendar year) shall pay a minimum charge determined by the Institute for each Contract Year, which minimum charge may be offset against any portions of an assessment otherwise payable hereunder, and (ii) no Oil Company Party shall be liable for that portion of an assessment which relates to payment of compensation by the Institute in excess of Five Hundred Thousand U.S. Dollars (U. S. $500,000.00) with respect to any one incident which occurred prior to the date upon which it becomes a Party to this Contract.

(6) Except as provided in Clause V(3) hereof, in the case of any Oil Company which becomes a Party hereto during a Contract Year after the commencement thereof, the Institute shall assess such Company in the manner provided in Clause V(5) hereof, but only in respect of that portion of said Contract Year during which it has been an Oil Company Party to this Contract.

(7) Upon termination of this Contract, any amounts remaining in the Fund shall be equitably distributed among the Oil Companies then Parties hereto.

VI. *Notice of Claim.*

The Institute shall not entertain any claim by any person allegedly sustaining pollution damage unless such person gives notice of claim to the Institute within one year of the date of the alleged incident giving rise to such a claim.

VII. *Rules and Directives.*

The Institute shall have the right to make rules and directives from time to time with respect to the interpretation and administration of this Contract.

VIII. *Amendment.*

This Contract may be amended by Special Resolution adopted at an Extraordinary General Meeting of the Institute upon a vote in which at least 75 per cent of the votes cast are in favour of said Resolution. However, and notwithstanding the provisions of Clause III(B), an Oil Company Party which votes against said Resolution shall have the option to withdraw herefrom on giving sixty days written notice to the Institute without, however, affecting its rights and obligations accrued at the time of withdrawal.

IX. *Law Governing.*

(A) This Contract shall be construed and shall take effect in accordance with the laws of England and the Courts of England shall have exclusive jurisdiction over any matter arising therefrom.

(B) This Contract shall not be construed as creating a trust.

(C) Anything to the contrary herein notwithstanding, a Party hereto shall not be required to incur any obligation or take any action which would violate any laws or government regulations which apply to it or, in the event its stock or shares are owned by another person, which would violate any laws or government regulations which apply to said person.

IN WITNESS WHEREOF, the Parties have entered into this Contract as of the date indicated in the Preamble hereto, or upon the date on which their application is accepted by the Institute as provided in Clause II(B).

AGIP SPA
By: Giancarlo Gini, Attorney-in-Fact

AMOCO TRADING INTERNATIONAL LIMITED
By Bruce K. Stephen, Attorney-in-Fact

BRITISH PETROLEUM COMPANY LIMITED
By: P. A. Medcraft, Attorney-in-Fact

CITIES SERVICE TANKERS CORPORATION
By: G. H. Blohm, President

COMPAGNIE FRANÇAISE DES PÉTROLES
By: B. A. Dubais, Attorney-in-Fact

ELF UNION
By: B. A. Dubais, Attorney-in-Fact

ESSO PETROLEUM COMPANY, LIMITED
By: R. E. Howe, Attorney-in-Fact

GULF OIL CORPORATION
By: W. C. Brodhead, Vice-President

ASIA OIL COMPANY, LIMITED
DAIKYO OIL COMPANY, LIMITED
FUJI KOSAN COMPANY, LIMITED
FUJI OIL COMPANY, LIMITED
GENERAL SEIKIYU SEISEI K.K.
IDEMITSU KOSAN COMPANY LIMITED
KASHIMA OIL COMPANY LIMITED
KOA OIL COMPANY LIMITED
KYOKUTO PETROLEUM INDUSTRIES LIMITED
KYUSHU OIL COMPANY LIMITED
MARUZEN OIL COMPANY LIMITED
MITSUBISHI OIL COMPANY LIMITED
MITSUBISHI SHOJI KAISHA LIMITED
NIPPON MINING COMPANY LIMITED
NIPPON OIL COMPANY LIMITED
NIPPON PETROLEUM REFINING COMPANY LIMITED
SEIBU SEKIYU K.K.
SHELL SEKIYU K.K.
SHOWA OIL COMPANY LIMITED
TAIYO OIL COMPANY LIMITED
TOA NENRYO KGYO K.K.
TOA OIL COMPANY LIMITED
TOHO OIL COMPANY LIMITED
By: Masashi Kato, Attorney-in-Fact

MOBIL OIL CORPORATION
By: E. S. Checket, Vice President

PETROFINA S.A.
By John Mackenzie, Attorney-in-Fact

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED
By: A. S. M. Hetherington, Duly Authorized Attorney

SOCIEDADE PORTEGUESO DE NAVIOS TANQUES LIMITADA
By: R. C. Henriques, President
J. G. Leite, Director

STANDARD OIL COMPANY OF CALIFORNIA
By: L. C. Ford, Attorney-in-Fact
SUN OIL COMPANY
By W. G. S., Attorney-in-Fact
TEDACO INC.
By: John I. Mingay, Senior Vice President
OIL COMPANIES INSTITUTE FOR MARINE POLLUTION COMPENSATION LIMITED

VICE PRESIDENT and DIRECTOR

"EXHIBIT A"

TO: Oil Companies Institute for Marine Pollution Compensation Limited

The undersigned, and such of its affiliates as it may designate in an attachment hereto, hereby applies (apply) to become an Oil Company Party (Parties) to the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution ("CRISTAL"), dated as of 14 January, 1971, and agrees (agree), if this application is accepted, to fulfil all the obligations of an Oil Company Party, to become a shareholder in the Oil Companies Institute For Marine Pollution Compensation Limited, and to abide by its By-Laws, Rules and Directives.

.....

Accepted upon this

.....day of.....

Oil Companies Institute for Marine Pollution Compensation Limited

APPENDIX "D"

SUBMISSION OF
GULF OIL CANADA LIMITED
TO THE STANDING SENATE COMMITTEE
ON TRANSPORT AND COMMUNICATIONS

Gulf Oil Canada Limited is a major integrated oil company carrying on business in all provinces in Canada, the Yukon and the Northwest Territories.

During the year 1970, the volume of crude and refined products moved via ocean-going vessels from points outside Canada into the country totalled 23,616,227 barrels. In the same period, coastwise movements within Canada of crude and refined petroleum products totalled 12,914,-533 barrels.

Gulf Canada owns no ocean-going vessels and its ownership of domestic vessels is limited to one ship of 15,425 deadweight tons.

The Company is the owner of all cargoes moved within Canadian waters. With limited exceptions, Gulf Canada's offshore crude and refined products purchase contracts are f.o.b. port of loading. Thus, title to and risk in the cargo passes to the Company at that point.

Under these circumstances, it will be obvious that Gulf Canada's prime concern with Bill C-2 relates to those provisions dealing with cargo owners.

This Bill proposes two concepts of legal liability, irrespective of fault, affecting the cargo owner which are completely new:

1. a primary liability under which a cargo owner has the same liability as a shipowner to victims of pollution on a joint and several basis;

2. A secondary liability under which cargo owners would establish and maintain through direct contribution a Maritime Pollution Claims Fund. The fund would be used to provide compensation to the extent that it is not recoverable from the shipowner or cargo owner under the primary liability.

These concepts are founded on the premise that all persons who suffer damage, costs and expenses as a result of marine pollution must receive full compensation. While Gulf Canada does not disagree with the objective, it does not believe that the imposition of Primary Cargo Liability is a proper means of attaining it for the following reasons:

1. The owner of a cargo does not have any control over the cargo or over the ship from the time a voyage commences until it ends;

2. Imposition of Primary Cargo Liability will not create, as has been suggested, an incentive for charterers to select safer ships;

3. The shipowner, in fact, will pay for all damages for which he is responsible up to the statutory limit of his liability. The shipowner must be insured for this amount under Section 745 of the Bill and by virtue of international shipping practice;

4. It is manifestly unfair and inequitable to bring home to the cargo owner, who is without any control or knowledge, the unlimited liability arising from the "fault or privity" of the owner as is proposed in Section 744(4)(d). Furthermore, there is no specific right of recourse given to a cargo owner who has made or has been compelled to make a payment under Section 743 against the shipowner.

With respect to the secondary liability imposed upon oil company cargo owners by way of contributions to the Maritime Pollution Claims Fund, Gulf Canada strongly contends that the Fund should be in substitution for, and not added to, the proposed Primary Cargo Liability. For the reasons mentioned above, the objectives to be attained would in no way be jeopardized by so doing. With respect to the Fund itself as proposed by the Bill, the following points are caused for concern:

1. The Fund may be drawn upon to compensate for damages caused by any pollutant. The fund contributors as the Bill presently stands will be limited to owners of oil cargoes. This unjustly discriminates against members of the oil industry. The Bill should be amended to provide that the Fund be not available for disasters caused by pollutants other than oil until such time as the owners of cargoes other than oil are required to contribute to the Fund.

2. The exceptions to the absolute nature of the liability of shipowners should apply to the liability on the part of the Fund.

3. The proposed Bill does not clearly define an inland voyage. This is particularly important with respect to domestic movements of refined products which involve multiple stopovers at terminal points and, in some cases, movement between terminals.

4. It is essential that the Bill specify a maximum amount for the Fund. Provision may be made for an increase or decrease in such amount based on experience over a stated period of time. To this date, experience in Canada would indicate a maximum of $10,000,000 would be sufficient.

It is regrettable that the liability provisions contained in Bill C-2 have not been brought into line with the Brussels Liability Convention, i.e., the Brussels International Convention on Civil Liability for Oil Pollution drafted at the IMCO-Brussels International Legal Conference on Pollution of the Sea by Oil held in November, 1970. This is particularly so due to the progress being made in the establishment of an International Compensation Fund for Oil Pollution Damage. This will be a cargo-supported, permanent fund to supplement shipowner liability for oil pollution damage to a maximum of $30,000,000 per accident. Compensation will only be payable to pollution victims in countries which have ratified the Convention mentioned above. Canadians cannot qualify if Bill C-2 exists in its proposed form.

It should also be noted that the Fund created by Bill C-2 completely ignores the fact that, effective April 1, 1971, a group of international oil companies will create

by voluntary agreement a fund to provide compensation to pollution claimants of up to $30,000,000 per incident over and above the liability of tanker owners. This is known as the CRISTAL agreement and will be supplementary to TOVALOP.

The unilateral enactment of Bill C-2 by the Government of Canada under these circumstances would appear, with due respect, to be hasty and unnecessary.

Respectfully submitted,

GULF OIL CANADA LIMITED

APPENDIX "E"

CANADIAN CHAMBER OF SHIPPING

OIL POLLUTION
NATIONAL AND INTERNATIONAL LEGISLATION

Shipping is an international business involving the carriage of cargo and passengers between more than 100 separate sovereign states. A single voyage from one port to the next may involve a ship passing through the waters of many coastal states.

There is no supra-national body which can legislate for all the waters of the world any more than for the air above them or for outer space. Thus the only two possible ways of creating any laws for shipping are—

(i) separate legislation by each separate coastal state;

(ii) international agreements freely arrived at by governments and freely accepted by them.

Where national legislation affects shipping only incidentally, e.g. the ordinary criminal law, it is inevitable that there will be some variations between different local laws. Where, however, legislation is peculiar to shipping and affects foreign as well as national flag vessels it should, as far as possible, be on lines internationally agreed. There are three reasons:—

(a) The practical consequences of a new Bill are not always fully appreciated by its authors. Examination by world experts at IMCO can test the soundness of new ideas proposals; those which receive their endorsement will normally be readily accepted by both governments and shipowners. As a consequence, the required measures may be widely introduced even before the approprate convention has come into force.

(b) However reasonable individual national legislation may be, even minor differences between the laws of states can cause major practical difficulties for world shipping and consequently world trade.

(c) Even if national laws are identical, there may, in the absence of any international agreement, be serious problems owing to the fact that a shipowner instead of satisfying one state (the flag-state) must satisfy separately and individually every coastal state to which his ships may go. For example, shipowners have said that they can live with the compulsory insurance provisions of the International Convention on Civil Liability for Oil Pollution Damage; they could not live with a situation where every coastal state had to be separately satisfied of a ship's financial responsibility—even if the requirements under national legislation were less stringent than those in the Convention.

For these three reasons shipowners' constant theme is that shipping is an international business and all problems, except the most local, should be resolved internationally. If a country "goes it alone" the result it desires may not be achieved; even if it is achieved it may be only at a disproportionate cost to its own economy. For example, if a country requires vessels to be designed and equipped in a way which no other country demands, fewer ships will be able to serve it, and those that do will have greater expenses to recover. Extra costs, whether of equipment, running expenses or liability are likely to be passed on through freight rates to the importer and exporter. Where those costs arise from action in one country only, the resultant burden on that country's trade is inevitably much higher than where the cost arises from any international agreement. It is occasionally suggested that the plea for international agreement is an attempt to delay unpleasant legislation. It is not; shipowners have a long record of anticipating legal requirements and acting without delay on items on which there is international agreement. For example, the load-on-top system was widely introduced well ahead of the necessary amendments to the Oil Pollution Convention 1954, and shipowners have complied with IMCO's traffic separation schemes without waiting for their formal adoption by the IMCO Assembly. In the field of liability for oil pollution damage, tanker companies representing over 80 per cent of the world's tanker tonnage have, through TOVALOP, voluntarily accepted a responsibility over and above their legal liability.

Against this background shipowners feel justified in calling on governments to stick firmly to international solutions to the problems of oil pollution. This means for example that national legislation or liability should be based on the International Convention on Civil Liability for Oil Pollution Damage and in due course, on the proposed Convention on an International Compensation Fund.

Meanwhile, full advantage can be taken of the voluntary schemes set up by the industry.

Other measures against oil pollution have been agreed internationally and shipowners welcome national implementation of the International Convention on Oil Pollution 1954/69—when the shore reception facilities envisaged in the Convention have been provided—and of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

10-2-1971.

APPENDIX "F"

Submission by the International Chamber of Shipping in connection with Bill C-2, an Act to amend the Canada Shipping Act

Representatives of the International Chamber of Shipping (ICS) were given the privilege of testifying before the House of Commons Special Committee on Environmental Pollution and their testimony appears in Issue No. 5 of the Committee's proceedings. A subsequent written submission appears in Issue No. 6.

Since then, the Bill has been amended in the House of Commons and there have been certain relevant developments elsewhere. Accordingly, it may be useful to the Senate for ICS to make a further submission, a submission which is not a mere repeat of the previous one, but which like it, concentrates on specific constructive proposals. These proposals should in no way weaken the effect of the Bill, but should reduce the harm which it might otherwise do to Canada's international trade.

Section 738 deals with the removal and destruction of ships in distress. The representatives of ICS suggested that the powers given under this Section might be widened to embrace other forms of emergency action; they added at the same time that the powers should be balanced by the safeguards of the relevant international convention* adopted without a dissentient vote at the international Legal Conference on Marine Pollution Damage. Since this suggestion was made it has been shown to be a practical proposition; the Oil in Navigable Waters Bill now before the United Kingdom Parliament illustrates how a government can take sufficiently wide powers to act in an emergency but do so in a way which is likely to be acceptable to other nations.

Section 739. The original submission in respect of this Section remains valid. It read in part:

> "*Section 739* enables the Government to issue regulations on almost every aspect of operations. It applies not only to ships coming to Canadian ports, but also to those which are engaged in Innocent Passage to the ports of other states. It is this latter provision which could lead to other governments taking similar action and subject vessels carrying Canada's cargoes to the regime of many other coastal states. It would seem to shipowners a major improvement if this section or even the whole Bill were limited to ships calling at Canadian ports. This alteration would make little practical difference to the Bill's effectiveness but would remove the very serious risk of starting a chain reaction which could seriously damage Canada's trade.
>
> Insofar as the section applies to ships calling at Canada, the effect will depend on whether the regulations correspond with international agreements, go beyond them, or conflict with them. It is believed that there is a genuine wish to use all effective international agreements and it might be helpful if the wording were to make this clear, for example, by stating that 'without limiting the generality of these powers' the Governor in Council should be empowered to issue regulations implementing any international convention dealing with the subjects listed.
>
> In any case, shipowners would hope that the opening words of the section would make it clear that before regulations are finally issued, there should be full and adequate consultation with all interested parties. In addition, words could be added to incorporate all the safeguards constitutionally available in cases where a power is given to issue far-reaching regulations."

It should perhaps have been made clear that a vessel seeking refuge in a Canadian port should, in accordance with normal custom, be treated as a vessel engaged in innocent passage.

Sections 740 and 741 deal with the Pollution Prevention Officer.

Shipowners welcome the new *Section 741 (2)* providing compensation to vessels required to assist in clean-up. This change does, however, reinforce shipowners' belief that a power having such major consequences, should be in the hands not of a subordinate official, but of the Minister himself.

Other parts of *Section 741* give the Pollution Prevention Officer authority to issue navigational orders to individual ships, presumably in order to reduce accidents involving pollution. The problem of preventing accidents is a worldwide one and arises in an acute form in such international waterways as the Malacca Straits and the Dover Strait. Accordingly, governments in IMCO have for long been giving thought to any measures that would be useful. Yet at no time has there been any significant support for this or any other form of positive traffic control by third parties. Presumably this is because of the belief—which the shipping industry shares—that it would create serious legal and practical difficulties and might increase accidents rather than reduce them. It therefore seems to ICS both undesirable and dangerous for Bill C.2 to give such powers to officials who may be completely unqualified.

Sections 743 and 744 deal with liability. The amendments that have been made to the Bill substantially meet the points made by the ICS representatives. They would, however, hope that the Senate would take expert advice on this subject from the representatives of the P and I Clubs.

Section 757 now makes it clear that the responsibility for payment to the Fund rests on the cargo owner and not on the shipowner. However, Sub-Section (2) dealing with the point in time by which payment must be made has not been altered. This means that the ship may still be involved in expense not of paying, but of delay because someone else has not paid. This problem of collection has been thoroughly debated in the current IMCO discussions on the proposed International Compensation Fund; it is now clear that nearly all member-governments there accept that contributions can and should be collected without delaying the discharge or departure of the ship. Accordingly ICS would urge the need for some

* The International Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties

amendment—which could be considered consequential to the amendment already made—that would avoid the shipowner having to provide in the freight rate for the possibility of delay. Such an amendment would remove a provision that is contrary to natural justice, and ensure that the consequences for non-payment were borne by the defaulter and not by an innocent third-party.

Sections 769 and 770 dealing with the seizure of vessels have been slightly amended. However, they still give the power of seizure to the Minister and not to the courts. In addition, a decision of the court that a ship shall be released is subject to the consent of the Minister. A tanker may cost several million pounds and to deprive the owner of its use without due process of law amounts to punishment without trial. Shipowners are therefore firmly of the belief that these sections should be deleted entirely. It is most earnestly suggested by ICS that, at the very least, amendments are made which will ensure that seizure can always be challenged in the courts and that the Executive is not able to thwart a court decision.

Section 4 of the Bill now provides that the Act shall come into force on a day to be fixed by proclamation but makes special provisions for Section 745 of the Canada Shipping Act. In view of the rapid developments in this field, it is urged that this provision should be sufficiently flexible to allow other sections to be brought in at different times and, if necessary at separate times for different classes of vessels.

General

The ICS representatives who appeared before the House of Commons Special Committee recounted what shipowners had done and are doing to minimise pollution. They stressed also the importance of international agreement in dealing with the international problem of pollution. Examination in IMCO's multi-national forum has proved the best test yet of the soundness of any proposal.

Nevertheless, it is not sufficient that national shipping laws should be sound; for the sake of international trade they should also be uniform. However reasonable any individual national law may be, even minor differences from what applies elsewhere may cause major practical difficulties for shipping engaged in worldwide service. The prudent shipowner, in considering the best employment for his vessel, is bound to take special account of national legislation which involves requirements or obligations additional to or different from those with which he is faced in world trade generally. Bill C.2 has several such features which do not apply elsewhere—individual regulations on structural and operational matters (Section 739), sweeping powers given to subordinate officials (Section 741), and arbitrary seizure (Sections 769-770). It follows that an owner considering committing his vessel to Canada will have to provide in the rates he charges for the cost of fitting such special equipment and exposing his vessel to such special hazards—that is, if he does not decide that because of these difficulties it is better to employ his vessel elsewhere. All this leads to increases in the costs of exporting and importing.

There is recent evidence that unilateral anti-pollution laws in certain other parts of the world have already begun to have such an effect. In Canada itself, as officials of the Department of Transport are aware, there might have been similar consequences had the proposed Arctic Shipping Pollution Prevention Regulations come into effect this season. While ICS cannot say for certain what features of any Bill will in practice cause most difficulty, the present submission indicates certain features of C.2 which threaten to damage Canadian trade in this way.

Representatives of ICS have already made a special visit to Canada to discuss this Bill with the House of Commons Special Committee and with officials of the Department of Transport and, insofar as it is possible in the time available, ICS will be very willing to do all that it can to provide any further information or assistance that may be required.

12th March, 1971.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HÉDARD J. ROBICHAUD, *Acting Chairman*

No. 4

WEDNESDAY, MARCH 24, 1971

Third and final Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

REPORT OF THE COMMITTEE

(For list of Witnesses and Appendix—see Minutes of Proceedings)

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THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchilll	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

Wednesday, March 24th, 1971.
(4)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10.00 a.m. to further consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Bourget, Burchill, Hollett, Kinley, Kinnear, McElman, Petten, Rattenbury, Robichaud and Smith—(10).

On Motion of the Honourable Senator Bourget, the Honourable Senator Robichaud was elected Acting Chairman.

Present but not of the Committee: The Honourable Senators Hays, McNamara and Thompson. (3)

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator McElman, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The folloiwng witnesses were heard:

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch.

BP OIL LIMITED:

Mr. Jean Langelier, Q.C.,

LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS:

Mr. Jean Brisset, Q.C., Advocate.

PETROLEUM ASSOCIATION FOR CONSERVATION OF THE ENVIRONMENT (PACE)—IMPERIAL OIL.

Mr. J. L. Lewtas, Q.C., Counsel.

It was agreed to print as an Appendix to these Proceedings 2 Telex communications addressed to BP OIL LIMITED from OIL COMPANIES INTERNATIONAL MARINE FORUM.

It was Resolved to report the said Bill without amendment.

At 12.10 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Wednesday, March 24, 1971.

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, intituled: "An Act to amend the Canada Shipping Act", has in obedience to the order of reference of March 10, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. J. Robichaud,
Acting Chairman.

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Report of the Committee

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 24, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, this morning we again have before us Bill C-2, to amend the Canada Shipping Act. As you may have noticed, most of the witnesses who appeared before the committee at the last two meetings, and Mr. Macgillivray representing the department, are here this morning.

I suggest that we first have a statement by Mr. Macgillivray, following which he will be prepared to answer any questions by members of the committee. I understand that some of the witnesses may have very brief statements to make, adding to the representations they made at the last two meetings. We will proceed to hear Mr. Macgillivray's statement. I understand he has had a chance to discuss the bill further with the minister and his department.

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Honourable senators, at the last meeting I briefly reviewed the list of changes that I understood were being proposed by the witnesses, and I undertook to take them up with the minister. I also undertook to get some legal opinions from the Department of Justice. I have done this, and as a general statement the minister would like to point out to the committee the desirability of passing the bill without change, so as to avoid having to go back to the House of Commons, where they have a heavy calendar and the possibility would be that the bill would be delayed for a considerable period of time.

In the meantime, super-tankers are coming into the Bay of Fundy now; they will be coming into Chedabucto Bay within a few months, and will also be coming into Cherry Point on the west coast very close to our waters. There are many features of this bill that everyone has acknowledged to be desirable, and that the minister is anxious to see brought into force as soon as possible.

At the same time, the minister has recognized that some of the amendments the witnesses suggest should be made to the bill by this committee are acceptable in principle, and he is prepared to come back to Parliament before the end of the year with further amendments to the Canada Shipping Act to take care of some of these points. He does not accept all of the points that were raised before this committee, but he does recognize that some of the amendments could be made without defeating the objects of the bill. In order to get it into statutory form as soon as possible, he hopes that this committee will not recommend any amendments.

On one point which was made by one of the witnesses last week, about the missing word in the French text of section 744, I have traced it down and it is definitely a printer's error, a typographical error in the printing of the bill. As it was reported by the committee of the Commons, the word "et" appeared at the end of line 36 on page 13, making it quite clear that the printers had merely missed the next line of type where the word "irresistible"—

The Acting Chairman: The word "irresistible" was omitted in the French translation.

Mr. Macgillivray: So it is quite clearly a typographical error and it does not need any amendment moved by this committee.

The Acting Chairman: Mr. Macgillivray, will you also say a few words regarding the international situation in waters adjacent to Canadian and United States coasts? I think the minister has commented also on what could be done or might be done in this regard.

Senator Bourget: Are you talking about oil?

The Acting Chairman: This is the point regarding international agreements.

Mr. Macgillivray: It is easy to recognize that the bill presents problems in this area, that there should be if possible an agreement with the United States whereby, when an oil spill occurs in or near contiguous waters of the two nations and damage is done on both sides of the border, there must be some way of recognizing that claims will be brought in the courts of both countries, and that it is desirable that the one limitation amount be established and that the shipowner not be subject to double liability if damages exceed the limitation amount.

This is recognized and we do intend, as soon as opportunity permits—which will be when this bill is not occupying our time—to have talks with the Americans, not only about these liability provisions but about other related subjects we have for discussion. I am thinking particularly of a proposal we have for traffic control in the Strait of Juan de Fuca—at least traffic routing, which pretty well demands the agreement of both countries. And this may lead to traffic control in that area or part

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of it. It may also lead to a joint pilotage effort because if we accept a traffic separation scheme and compulsory pilotage in the Juan de Fuca Strait it would be necessary for United States pilots to be licensed to pilot on the Canadian side and for Canadian pilots to be licensed to pilot on the United States side.

These are subjects we are proposing for talks with the United States authorities in the near future. In addition, we would be talking about the proof of financial responsibility provisions, which are presenting problems now, when people must produce proof both in the United States and in Canada.

Senator Bourget: May I ask Mr. Macgillivray if this kind of international agreement between the two countries could be made and put into force without putting it into the bill?

Mr. Macgillivray: No, this is one of the things on which we would have to come back to Parliament for amendment.

Senator Bourget: Are you going to spell out now what the amendment might be in the fall?

Mr. Macgillivray: I think it would be preferable to do this as we go through the bill clause by clause, and when we come to the points which have been raised I could express the minister's view as of now.

The Acting Chairman: Are there any further questions?

Before we proceed with the bill, I understand that Mr. Langelier has a few remarks he wishes to add to his previous submission.

Mr. Jean Langelier, Q.C., BP Oil Limited: Thank you, Mr. Chairman and honourable senators, for allowing me to clarify some of the remarks which I made on March 17, at least more specifically on the international fund called CRISTAL.

Honourable senators will recall that at that time I unequivocally indicated that if Bill C-2 were to be passed in the form in which it presently is, the CRISTAL fund would not respond.

This view was questioned by Mr. Macgillivray at page 3:30 of the report and at page 3:32 by Senator Flynn, who said: "I question whether this is so".

Since appearing before your committee, I have endeavoured to obtain confirmation as to the accuracy of the opinion and of the statement which I gave you. I have now received the following Telexes which are being confirmed in writing.

The first Telex is signed by Mr. P. A. Medcraft, Chairman, Oil Companies International Marine Forum, which is the working group which prepared the agreement on the CRISTAL-OCIMF—that is short for the Oil Companies International Marine Fund. OCIMF met in London on Monday morning, a few days ago. This is the Telex:

> Question of response of CRISTAL to claims if Bill C-2 becomes law in present from has been closely considered by OCIMF working group today (stop) B.A. Dubais, Chairman of the Board of the Oil Companies Institute for Marine Pollution Compensation Limited advises as follows:
>
> Quote—you will appreciate that CRISTAL is a voluntary agreement and its applicability and its interpretation will be decided in any case by the institute (stop) However its basic objective is to supplement tanker liability (stop) If some other source of compensation created by law supplements that tanker liability there obviously is no area for CRISTAL to operate (stop) Our previous advice that no payment would be made by CRISTAL is confirmed and would refer you particularly to Article IV(b) (stop) This advice is given because Bill C-2 provides that claimants have right of recovery from shipowner and cargo owner under section 743 and to the extent that claims are not satisfied claimants are entitled to recover from Maritime Claims Fund under section 753 without limit (stop) Bill C-2 having given claimants such legal rights CRISTAL by its terms will not respond (stop) unquote.

A further signal or Telex came in respect of section 744(4)(d) which provides for unlimited liability. The text is as follows:

> For J. Langelier from P. A. Medcraft Your Telex 22nd recieved (stop) We confirm that if liability of either shipowner or cargo owner is unlimited under section 744(4)(d) due to actual fault or privity then no payment will be made by CRISTAL (stop) Letter follows containing text of statement given in previous Telex and confirming this Telex.

There is a point there which it is impossible to fathom in so far as we are concerned and that is that as far back as early last December, when PACE submitted a brief to the Committee of the House of Commons and in continuous correspondence with the committee and the Minister of Transport, both and all were kept fully advised of all developments in respect of CRISTAL. But nowhere, either at committee deliberations, to our knowledge, and before third reading, or at any time in the House of Commons, was mention ever made. But why was it not?

We think that the Canadian people are entitled to know, especially as they will be deprived of the benefits of CRISTAL—which are presently set at $30 million per accident—and this at no cost to Canadian taxpayers or consumers.

The Canadian fund at best has been estimated to bring in about $3 million in its first year of operation.

Secondly, we repeat in passing that a cargo owner should not be required to produce a certificate of financial responsibility up to $14 million, nor should he be required to contribute to the Maritime Claims Pollution Fund.

Thirdly, Mr. Macgillivray took exception at page 3:29 to our proposed amendment, the addition of the words "or partially" immediately following the word "wholly" in section 744(1)(b). I would think that there may have been a misunderstanding on that point. We are not, Mr. Chairman, questioning "the idea of the absolute liability" of which Mr. Macgillivray has spoken to us. All we are doing is providing for a defence to the cargo owner and to the shipper in the event of common fault.

Honourable senators, I thank you for allowing me the privilege of addressing you today.

The Acting Chairman: Thank you. Are there any questions?

Senator Hollett: I take it that unless the Government conforms to the request or the demand you have read there, we will not benefit by the oils from this company you represent?

Mr. Langelier: No, honourable senators. In fact, all I am saying is that if Canada decides to pass Bill C-2 in its present form, CRISTAL, the voluntary oil company sponsored agreement, will not pay any claims made by Canadians.

The Acting Chairman: Have you any comments, Mr. Macgillivray, on the point raised by Mr. Langelier?

Mr. Macgillivray: On the criticism of us for not having mentioned CRISTAL, I would have to review the proceedings of the other committee. I thought it was clear that we were aware of the CRISTAL plan, though to the best of my recollection we did not have the details of the plan until after the bill was reported by the committee of the other place. We have now the full details of the plan and, of course, we are studying it.

There are three bars mentioned in the Telexes to recovery from the fund, from CRISTAL, by Canadians. One is if the cargo owner is liable, and in its present form you will see that this is a provision that is to be brought into force by regulation. The bill, if it passes in its present form, imposes absolute liability on the shipowner. It will be extended to cover the cargo owner—as we have explained and as I believe the minister explained in the house—when we are able to work out a scheme as to exactly how this regime is to apply to the cargo owner.

The second point was that we would have our own fund and, of course, if we should have a $30 million incident after the bill comes into force and when our fund is only standing at, perhaps, $1 million, from my reading of the CRISTAL agreement we would be entitled to the amount after we had exhausted our own fund.

As to the effect of paragraph (d) of subsection (4) of section 744, on page 14, this is a feature of the Brussels Convention on liability for oil pollution damage. Actual fault or privity on the part of the shipowner is recognized in the Brussels Convention as a circumstance that denies the shipowner his right to limit liability. I expect this will be a feature common to the law of all the countries that give effect to the Brussels Convention on liability. I take it that the mere fact this is in the law does not deny people the right to claim against the fund when there is no fault or privity on the part of the person described and where his liability is limited and there is an excess of claims over the amount of his limitation. I cannot see that as a criticism of our legislation, since I expect it to be in the legislation of all the countries that accept the Brussels Convention.

The Acting Chairman: Are there any further questions?

Senator McElman: I think it might be useful if the witness could tell us how the costs of damages and clean-up with respect to the *Arrow* disaster were handled under existing legislation and the funds available for recovery, insurance or otherwise, in comparison to the proposed legislation.

Mr. Macgillivray: Under the existing legislation, in order to recover it would be necessary for us to sue the shipowner or the ship itself. In order to sue the shipowner we would have to serve him in his head office, which I believe is Panama—it is a Panamanian corporation that owned the *Arrow*. The alternative would be that while while we could possibly sue the ship itself while it sits on the bottom of the sea, there would be no point in launching an action because we are satisfied that the owner, the corporation, has no assets in Canada. The only other asset of that corporation that we knew of was another tanker of no great value, and if we were able to find that other tanker we could try and recover a judgment against it, but it would not be worth the cost of bringing an action. I must say that I do not think the final decision has been made as to how we are proceeding, but my understanding is that there is no point in trying to pursue the owner of that ship.

This is not a matter of limitation of liability, particularly; it is just the fact that the corporation that owned that ship was a corporation with very few assets. This is one of the features ot the present law, that you can have a one-ship company that can quite well avoid liability, even if you do not put limits in your legislation, by having just the one ship.

Senator Rattenbury: Is that not more or less standard in shipping?

Mr. Macgillivray: I think there is quite a trend towards that. There are quite a lot of one-ship companies. It is this type of thing that forces us into the situation where we are going to have to require proof of financial responsibility. But in the case of the *Arrow* The TOVALOP fund is available to us. I think our costs of clean-up and oil removal are over $3 million. That is the TOVALOP fund, which is the Tanker-Owner's Voluntary Arrangement for Liability for Oil Pollution. It is voluntary too, in the way Mr. Langelier has explained CRISTAL is, but we think that we can recover from TOVALOP a certain amount of money. The TOVALOP fund, in the case of the *Arrow*, would be about $1.1 million. It is related to the tonnage of the ship, so that there is a possibility of our getting up to about one-third of our costs. However, another point is that Imperial Oil went in and itself spent money in preventive and remedial measures.

Senator McElman: They were cargo only.

Mr. Macgillivray: Yes, and not under any liability to take any action. They did go in and they are in the position, as I understand it, of rating under the TOVALOP scheme with a claim for the costs they incurred. So

if there is $1.1 million available to us, which we think there is, we will be filing our claim of something over $3 million. Imperial Oil will be entering their claim; I do not know of any others. Then we will share prorata.

Senator Smith: Is the situation that the cargo that was lost would not have become the property of BA, to whom I understand it was destined, until it had been pumped on their property?

Mr. Macgillivray: I am not involved myself in the matter of the cleanup in the Chedabucto Bay situation. However, as I understand it we do not even know officially who owned the oil. Imperial Oil told us they owned it, but we do not know necessarily to whom it was consigned. Therefore I do not know when ownership would pass.

I understand that it is becoming more common for the consignee to take delivery f.o.b. the point of loading.

Senator Smith: I might suggest that this type of situation, where it is difficult to trace the real ownership at any one point, involves argument as to doing something which at first may appear drastic. Those of us who have personal knowledge of this particular spill have had a real experience. The situations which will develop in the future with the super tankers coming into our coastal waters will require measures much stronger than those we have had in the past.

We also appreciate the urgency of passing this in appropriate form.

The Acting Chairman: Mr. Macgillivray, I believe Senator McElman asked you how the *Arrow* situation would have been dealt with had this bill been in force.

Senator McElman: Let us say the fund had built up to an amount in excess of the $3-1/2 million covered in the case of the *Arrow* spill?

Mr. Macgillivray: In the case of the *Arrow*, under the new scheme we would hope that before the ship entered our waters we would have on file in the Department of Transport proof of financial responsibility up to the limit of that ship's liability. Its tonnage for liability purposes was about 11,000 and we are asking for $134 per ton for the bond. Therefore that would provide approximately $1,474,000 as the amount of its bond. Our costs being in excess of $3 million; there would not be sufficient left to satisfy our action. Had our national pollution claims fund been built up to approximately the $3 million mark, it would have handled the balance of those claims.

Senator Rattenbury: Do you mean that the recovery is dependent on someone, somewhere, establishing proof of financial responsibility prior to the arrival of the ship in Canadian waters, or is it on a continuing basis?

Mr. Macgillivray: No, it is intended that ships carrying pollutants in bulk will be require to have proof of financial responsibility on file in the department before they enter Canadian waters.

The United States legislation to which Captain Hurcomb referred last week, provides for this.

Senator Rattenbury: Does it work out?

Mr. Macgillivray: Their act comes into force on the first of April and we have not seen it in operation yet.

Senator Rattenbury: It seems to me that it could become rather cumbersome.

Mr. Macgillivray: That is quite possible, sir. However, if we do not have that then we are back to relying solely on the fund. Shipowners are in a position to establish one-ship companies so that their liability is meaningless when the ship is lost. However, under the regime proposed in this bill we would recover first against the bonds or other proof of financial responsibility filed by the ship. Following this, action would be taken against the pollution claims fund. In the event that the cargo owner were liable, or if for some reason the ship entered not having filed proof of financial responsibility, which quite possibly will happen, we would have to go against the fund for the whole amount. If by this time the cargo owner had been made liable we would be able to proceed against him to the extent of the ship's limited liability.

Senator Rattenbury: It is beginning to unfold itself in my mind that it may ultimately resolve itself into a situation where the owners of the cargo or the consignee of a cargo destined for an owner in Canada, which would be relatively infrequent I would think, would be the ones who would be covered or held liable for the placing of bonds and financial responsibilities. If you are going to chase single ships around the world and try to establish who owns them, who owned the cargo when it was shipped and to whom it was sold during passage, and so on—

Mr. Macgillivray: We will not have to prove who owned the ship if we have this proof of financial responsibility on file.

Senator Rattenbury: But you will need proof of financial responsibility by the shipowner. Therefore, you will have to prove the owner of the ship.

Mr. Macgillivray: It can be given on behalf of the ship by the insurance company. Ownership of the vessel might change as it frequently does.

Senator Rattenbury: The ship and the cargo change too.

Mr. Macgillivray: We are keeping in mind that international developments are taking place. As the minister has made clear, we were unhappy with the Brussels convention on liability for oil damage. However, we recognize that work is being done, and we are participating in it, on an international marine pollution claims fund.

Senator Rattenbury: You are referring to CRISTAL?

Mr. Macgillivray: No, CRISTAL and TOVALOP are both voluntary arrangements, which are intended to fill the gap until this international fund is agreed to in an international convention. I believe it is clear that both the TOVALOP and CRISTAL schemes will go out

of existence when an international fund convention comes into force.

Senator Rattenbury: Is that correct?

Mr. Langelier: This is quite so.

Mr. Macgillivray: Work is progressing. The present timetable is for a diplomatic conference in November of this year to settle on a fund convention. If the fund convention is arrived at and its terms are such that we think it covers the liability situation satisfactorily, then I think we will want Canada to belong to the convention.

Senator Rattenbury: Are you now saying this could be stop-gap legislation?

Mr. Macgillivray: Yes, sir.

The Acting Chairman: To some extent.

Mr. Macgillivray: To some extent. It seems quite clear that a feature of the fund convention will be that in order to belong to the convention a country must also belong to the 1969 liability convention. There is no question but that if a satisfactory fund convention is arrived at, the Government will have to go back to Parliament with amendments to bring the legislation into line with the two conventions.

Senator Rattenbury: I am happier now than I was last week.

The Acting Chairman: Any further questions?

Senator McElman: I have one supplementary question to put to Mr. Macgillivray. It concerns a further situation relating to another *Arrow* incident. Let us say the damage from such a spill were $10 million and there were the possibility of recovering from the liability insurance covering the vessel $1.5 approximately, which you speak of in this case. If the fund now being established stood at $5 million, you would have a recovery of $6.5 million, so $3.5 million remains. What access would there be for the cargo owner in that case to additional recovery?

Mr. Macgillivray: None, sir. The liability of the cargo owner when that provision comes into force is joint and several with that of the shipowner. If we recover against the shipowner or from the shipowner's insurance, that settles that joint and several liability. If the fund stood at $5 million there would still be a possibility of the Government bringing an item in an estimate and advancing money to the fund by way of loan. We did not put such a provision in the bill, but the way to do it would be to go on the Estimates for funds to meet a loan to this pollution claims fund.

Senator Bourget: Would that be agreed to by the house without legislation?

Mr. Macgillivray: No, it would be an item in the Estimates; it would be legislation.

Senator Bourget: Have they protested that type of estimate lately in the house?

Mr. Macgillivray: I do not think that is the type they protest. It would be a specific money item being advanced by way of loan for a specific purpose.

The Acting Chairman: And the amount may have to be specified?

Mr. Macgillivray: Yes.

The Acting Chairman: Which is different from a one dollar item.

Senator Bourget: It would not be a one dollar item?

Mr. Macgillivray: No..

Senator Thompson: Mr. Macgillivray said with respect to the CRISTAL fund that countries who belonged to the 1969 Brussels convention might not, having regard to the terms of the convention they have joined in, come under the auspices of the CRISTAL fund. Is that correct?

Mr. Macgillivray: I am trying to interpret the telegram from CRISTAL. I think what they are saying is that where a shipowner through personal fault or through privity loses his limitation of liability, CRISTAL will not fill the gap, such as might exist, above the limitation amount of the shipowner.

Senator Thompson: You brought this in with respect to the Brussels convention?

Mr. Macgillivray: I cannot report accurately on this because I am not familiar with it. There was a meeting last week in London to discuss the proposed international fund convention. I have not seen the report on it yet, but I understand that the likely form of the international fund to be established by the convention is such that it will contain the same exclusions to liability as the Brussels liability convention. I therefore expect that where a shipowner loses his privilege of limitation, the new international fund will not pay claims in excess of the limitation amount.

Senator Thompson: Can I infer from that that the CRISTAL fund would not apply to countries that have signed the Brussels convention, under the definition you are making?

Mr. Macgillivray: This is why I say I find it difficult to understand the telegram, because I know the CRISTAL fund is clearly intended to apply to and pay benefits in those countries that do bring their law into line with the Brussels liability convention.

Senator Thompson: Could we have clarification from Mr. Langelier?

Mr. Langelier: If we refer to the Brussels Convention No. 1, it will eventually have what has been adopted and ratified by the various countries, and the international compensation fund. The CRISTAL fund and TOVALOP, as was mentioned earlier, are both voluntary contributions, and they are stop-gap funds until such time as the Brussels convention has been ratified and the international compensation fund has been created.

Senator Thompson: If Canada will be excluded from CRISTAL, what other countries would this apply to if we pass this legislation?

Mr. Langelier: What I have been saying is that if Canada proceeds with Bill C-2 as it presently stands, having (1) unlimited liability in the event of fault or privity, and (2) a maritime claims pollution fund in an unlimited amount, CRISTAL will not respond to any claims made by Canadians.

Senator Thompson: Are there other countries associated with the Brussels convention that would require a similar situation to that of Canada in respect of this legislation?

Mr. Langelier: Canada is providing the world with a novel departure, because none of the countries which have agreements and shipping acts at the moment provide for unlimited liability. There is limitation of liability. Therefore, the CRISTAL fund would be operational as far as the fund is concerned and the claim would be paid.

Senator McElman: At the beginning of this month, Dr. McTaggart-Cowan, the Executive Director of the Science Council of Canada, and also in charge of the Chedabucto cleanup, made a public statement that a ship a week is going down in the oceans of the world, of the average of the class of the *Arrow*, and that 300 million gallons of oil is going into spills in the oceans of the world. Perhaps we could get some indication from Mr. Brisset as to the accuracy of this, and as to whether his organization would be able to confirm Mr. MacTaggart-Cowan's statement, and as to whether the damages caused by these spills are currently being covered?

The Acting Chairman: Mr. Brisset, have you any comment on that statement?

Mr. Jean Brisset, Q.C., Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman and honorable senators, I cannot comment on the statement. It may well be that 52 ships a year go down in the oceans, but they are not all tankers. I would say most of them are dry cargo vessels. There have been spills in the past. I can only speak of the claims I have been attending to myself. We have had some in the St. Lawrence River. For instance, some years ago there was a tanker called the *Vibex*. She went aground near the eel fishing grounds near Orleans Island. There was quite a sizeable discharge of oil, causing considerable damage to the eel fishing installations along the whole of Orleans Island, and further down—even to a ship that was carrying live eels in the Port of Quebec. There were claims and I believe that the aggregate of the claims was of the order of about half a million dollars, and this was paid by P and I, Association.

There were minor spills elsewhere in the St. Lawrence over the years. I remember that in 1969 when the first Bill was presented to Parliament to deal with these questions, P and I representatives were present and submitted particulars. Unfortunately this goes back two years ago and I have not got them with me. They listed all the accidents that have occurred in our waters and indicated the amount of the indemnity they had to pay.

Prior to the *Arrow*, I do not recall that we have had any as serious as the *Arrow* accident. I mean, that this is the first really serious accident involving millions of dollars.

Perhaps Mr. Macgillivray can correct me if I am wrong there.

Mr. Macgillivray: No, I think that is correct, sir. I think this is the first, and I hesitate to refer to it in that term, as I hope it is the last.

In regard to such spills as the *Arrow*, we did have a tank barge full of oil sink in Howe Sound near Vancouver about five or six years ago and it cost us half a million dollars to raise that, of which we recovered something. Having salvaged the barge and the oil, we sold these and recovered that much, which was a small part of the half million dollars.

Senator McElman: And you have one now in the Gulf of St. Lawrence.

Mr. Macgillivray: Yes, and that will of course be raised as soon as the weather permits.

Senator McElman: Is that a Government supervised operation or a company supervised operation?

Mr. Macgillivray: I am not familiar with precisely the situation at the present time but I believe that the company intends to raise that barge.

Of course, we have a responsibility to be standing by and we will in effect be looking over their shoulder as they do it, to ensure that proper methods are used. We have the privilege under the law of stepping in and doing it ourselves if we feel they are not doing it properly. Until this bill goes through, however, we would have to go in as a volunteer and we would have no right against owners, if we did have to step in and do it ourselves. The only right we would have would be to the salvage.

Senator McElman: You spoke of the financial responsibility being filed on behalf of the shipowners. Do we currently have stringent regulations as to the seaworthiness of oil carrying vessels htat come into our coastal waters and visit our ports?

Mr. Macgillivray: No, we do not. This is one of the objects of the present bill. The whole philosophy of marine safety legislation has been in the past the safety of life at sea and it has all been aimed at ensuring that the ship when it leaves port is in a safe condition. So all of our laws are designed to ensure that ships leaving our ports are properly maintained, designed, and equipped. But we have no law, until this bill becomes law, that says that ships entering our waters must be in safe condition. Really, in this bill, we are adding a new objective of protection of the environment, protection against what damage the ship can do, whereas our earlier objective has been, as I say, the safety of life and the safety of the ship for that purpose.

Senator McElman: As I understand it, we are dealing with three types of vessels here, in so far as ownership

and liability are concerned. The major oil companies have their own vessels which are, I think, under subsidiary companies in many cases and are flying under another flag. These, as I understand it, are generally in pretty good shape.

Then we have the longterm charters that are made by the major oil companies which, as I understand this type of vessel, under long term charter, are generally in pretty good shape.

Then we have the short term plan, the one ship, that Senator Rattenbury was speaking about. I understand that many of these are in pretty awful shape and do constitute a very real danger to any coastal waters.

Do you feel that the legislation which is proposed now that joins the shipowner and the cargo owner will give us added protection in this area, too?

Mr. Macgillivray: I think the ultimate protection in this area will be regulations respecting the safety of the ship itself. The bill does provide for us to have regulations regarding the construction of the ship, its maintenance in good shape, and its equipment, even the manning of it. We are able, under this, to bring in a scheme where the ship would have to provide proof that it is being maintained in proper shape. I think this is the best weapon to ensure that ships coming into our waters will not be a hazard, from the moment they enter our waters, due to their condition.

However, one of the thoughts in adding cargo owner liability has been that we should perhaps encourage the cargo owners to be more selective in their charter arrangements. We have had pointed out to us that this is not the way the charter market operates and that ships must be chartered sometimes on a matter of a few hours' or a few days' notice. However, maybe the way the charter market operates is not the best in order to prevent pollution. This was one of the objectives in placing the liability on the cargo owner, to try and make him more selective.

Senator Burchill: Mr. Macgillivray, I want to refer again to the point I raised the other morning about the danger of a spill, not particularly from an oil tanker but from any type of diesel vessel, in the smaller harbours or ports like our local ports of Newscastle and Chatham which, as you know, handle a substantial amount of shipping,

Senator McElman: On the Miramichi.

Senator Burchill: Yes, on the Miramichi. Suppose we have a spill there—you know what the Miramichi is, Mr. Macgillivray; the greatest salmon river in the world.

The Acting Chairman: Coming from you, Senator Burchill, we accept that.

Senator Burchill: That is a fact. The former minister of Fisheries would confirm that. Senator Rattenbury does not care because he is in the Port of Saint John and your office is in the Port of Saint John, and you can take action, but if we have a spill on the Miramichi there is no one in authority to do anything about it. I do not think it would be too much with which to entrust the harbour master, for instance—and I am just mentioning him as one official who might be the one to communicate with your department in Saint John. I want somebody on the spot there to take the responsibility of notifying your department that there has been a spill. There is nobody there now at all. You admitted that the other morning.

I have a letter from the Minister of Transport that our harbour master is being retired on account of age much against his will. I think he is just as capable of doing the job now as he ever was. Be that as it may, the minister is going to retire him because they need a younger man to perform all the duties of harbour master. That is not a very heavy duty to impose on a harbour master, to keep an eye on the oil spills in the river, is it?

Mr. Macgillivray: No, it is not, senator. As you know, there are provisions in the bill for the appointment of pollution prevention officers. They can be given very wide powers, although what you are asking for here is really only that there be somebody on the spot to alert the office in Saint John.

Senator Burchill: That is right.

Mr. Macgillivray: We have tried under our present oil pollution prevention regulations to encourage very prompt notification of the department when any kind of spill occurs, whether from such a thing as a grounding or other ship casualty, or the pumping of tank washings or some other means of getting the oil into the water. We have tried to encourage all people to report to our reporting offices promptly, and quite often we do get very quick reports.

I will take a special look at the situation on the Miramichi, and I feel quite sure that the harbour master or somebody can be persuaded that he should report promptly.

Senator Smith: If I have a moment, I would like to point out that he does not need to be reminded of it. There are a great many ports of the same character as Senator Burchill's. I do not think we are narrow minded about this thing at all, but I am quite conscious of the relatively heavy traffic that gos into the port I live in where there is a newsprint industry, and so on, and where there is peaking power generation by oil. It seems to me that is a very hazardous situation as far as another salmon stream is concerned and a harbour which today is already polluted to a certain extent by the effluent of the newsprint industry. It seems to me that orders should be sent out to the harbour masters in all these ports making it part of their duty to keep an eye on this very thing and to report it to their district office, which in this case I suppose would be Halifax. I am glad Senator Burchill raised this point because I think it is very important.

The Acting Chairman: I am sure Mr. Macgillivray will take notice of this suggestion.

Senator Kinley: This bill provides for the appointment of an administrator who seems to have wide powers and seems to be in control of the situation almost completely. Is that your attempt to give proper effect to the law?

Mr. Macgillivray: I do not think the administrator has very wide powers. His only powers are in relation to the pollution claims fund, and he has no powers of any other kind. His powers are to accept payments into the fund and to make payments out of it in the appropriate cases.

Senator Kinley: How are you going to control this pollution? You cannot with the powers you have now, so you have to have some extra way of preventing it.

Mr. Macgillivray: Yes, the administrator is not part of the scheme of controlling pollution. He fits into the scheme for ensuring that there will be adequate recovery by persons damaged when an incident does occur.

Senatol Kinley: It says:

> "Administrator" means the Administrator of the Maritime Pollution Claims Fund.

The Acting Chairman: This is exactly what Mr. Macgillivray has said.

Senator Kinley: This fund you are setting up is based on 15 cents a ton.

Mr. Macgillivray: It will be an amount of not more than 15 cents a ton.

Senator Kinley: You could make it less if you wanted to?

Mr. Macgillivray: Yes.

Senator Kinley: That is about seven mills on the gallon, to put it into the language of the street. If I am buying oil it means about seven mills on the price of oil. That is not a very heavy tax, is it?

Mr. Macgillivray: No, I do not think it is, but I think we must recognize—

Senator Kinley: The oil companies the other day said they were going to have the vessels incorporated. It appears from this that the obligation of a shareholder would be 2,000 gold francs, is that not right?

Mr. Macgillivray: Yes, 2,000 gold francs per ton of the ship's tonnage is the limitation amount.

Senator Kinley: The Napoleon gold franc is worth about 64½ cents.

Mr. Macgillivray: No, this franc is worth about six and two-thirds cents.

Senator Kinley: This is not the Napoleonic franc?

Mr. Macgillivray: No.

Senator Thompson: Mr. Chairman, I would like to hear clearly from Mr. Macgillivray with respect to one of the major contentions of the briefs, this first level of liability, and the principle that the cargo owner considers that he should not be liable with the shipowner.

At page 3:12 of the *Proceedings* of Mrch 17, 1971, Mr. Lewtas said:

> When we asked why they did not—

That is, why they did not separate this, and have the cargo owner at the second level of responsibility through the Maritime pollution payments—when he was asked in the other place with respect to this, he said:

> When we asked why they did not, only one rejoinder was made to us, and that was to the effect that apparently there was some thought that, if the cargo owner was made jointly and severally liable at that first level of liability, he would in some indefinable way be more careful in selecting the ships which he chartered—

And so on.

We have listened to the points with respect to the capability of maintaining the ships, that they are seaworthy and have financial responsibility.

Do you consider that first principle to be more than just an indefinable way in which the cargo owner assumes responsibility?

Mr. Macgillivray: The responsibility is not indefinable; it will be placed on the cargo owner by statute once the order in council is passed bringing that feature into force. In my opinion Mr. Lewtas' use of the word "indefinable" was descriptive of the suggestion that I have referred to a little earlier this morning, that one of the objectives in asking for cargo owner liablity is to make the cargo owner a little more selective in the chartering of these tramp vessels.

Senator Thompson: Will the cargo owner perhaps escape this if it is a one-ship owner? It will be traced back to him in connection with owner responsibility. The cargo owner will be careful before he picks on that particular ship.

Mr. Macgillivray: I think there would be an incentive to the person in, say, an oil company who is responsible for chartering, if he had a choice between two ships and knew that the owner of one had a reputation for maintaining his ship in good condition, to select that ship in preference to another, even if there were a slight cost difference.

Senator McElman: Is the *Arrow* not a case of the type of company you have suggested? It was a two-ship company, Panamanian registry and the findings as I recall have been that the navigational equipment, including the—

Senator Rattenbury: And the use thereof.

Senator McElman: The sonar, radar, or whatever it was, was not functioning and this vessel was entering very rugged waters; the east coast is a very rough area and it was coming in through a storm. This vessel was not in truth seaworthy.

Is that not a case in point of the question raised by the senator?

Mr. Macgillivray: The *Arrow* is definitely a good example of the type of ship we would hope that people would not charter.

Senator McElman: Exactly.

Mr. Macgillivray: It was not in good shape.

Senator Kinley: This act will look after that.

Mr. Macgillivray: I do not think this act will look after anything in final form.

Senator Kinley: It will make sure that the ships are safe.

Mr. Macgillivray: It provides an opportunity to improve the situation.

Senator Kinnear: Did Mr. Macgillivray say that Imperial Oil was the charterer of that cargo?

Mr. Macgillivray: As I understand it, Imperial Oil were owners of the cargo on the *Arrow*, yes.

Senator Kinnear: It seems to me that a company the size of Imperial Oil should know the condition of a vessel that it is chartering. I am surprised that they would use a vessel such as the *Arrow*. Would you not think they would know that vessel quite well?

Mr. Macgillivray: I think perhaps there are witnesses here representing Imperial Oil who would be more competent than I to answer that.

Mr. J. L. Lewtas, Q.C., Counsel, Petroleum Association for Conservation of Environment—Imperial Oil: There are one or two points that should be made clear: when Imperial Oil chartered the *Arrow* they knew that the ship met in every respect the requirements of the world insurance industry. Those with the responsibility of classifying that ship had pronounced it to be in A-1 condition.

Another point that I believe I should bring out is that no one here, least of all Imperial Oil, is speaking proudly and gratefully with regard to the *Arrow* incident. We admit that, apparently retrospectively, it was discovered that certain navigational equipment of a sophisticated nature on the *Arrow* was not working properly.

The judge who conducted the inquiry specifically found the reason the vessel went aground was because the captain failed to use the most elementary type of navigational technique.

Senator Rattenbury: It was human error, in other words.

Mr. Lewtas: Human error indeed; he only had to take bearings on a few lights, for which he had all the visibility necessary. Therefore, whether or not the radar was working properly in this particular incident, made no difference whatsoever. As we said in our evidence at the other place, it does not matter how well we select a vessel; the plain fact of the *Arrow* incident is that even the best of them are not built to go overland.

Speaking also to this business of selection of ships, when I referred to "some indefinable way" in which we would improve the nature of the ships chartered, I meant just that. The oil companies take great pride in their chartering practices. The best ships are employed most regularly.

The fact is, however, that when a chartering manager of a major oil company finds that a cargo has to be moved, he does not have that much discretion. He knows that he requires a ship that will carry a certain quantity; he knows that that ship must be on location to pick up the cargo at a certain time and right there he has limited himself tremendously to the number of ships. He has to consult his records to find out where ships of that description are geographically and how they are committed to other people. Almost immediately his choice has come down to very few ships indeed. At that point he has to pick the ship which is best suited to his requirements. He does not have weeks to do this; he cannot get on an airplane and go around the ship beating a hammer to see whether it is in shape. He has literally very few hours to make this decision and if he has hours, indeed, what he does is then a function of two things. First of all, he must know that that ship is fully rated and classified by all the classification societies in the world which are applicable to it and that will be an indication to him that the ship is fully insured.

The other thing he will have is his own personal blacklist. They all know there are certain ships and ship owners which they do not wish to deal with, and they will not deal with them.

Senator Kinley: I have a question in regard to insurance. The insurance people must be careful. If they do not insure a ship, what happens to it?

Mr. Lewtas: If the insurance company will not insure the ship you can be sure it will not be carrying an Imperial Oil cargo.

Senator Kinley: If it is not insured you will not give it a charter?

Mr. Lewtas: It does not go to sea.

Senator Kinley: I suppose if they opened the Suez Canal your problem would be half settled?

Mr. Lewtas: Most of the ships coming from Venezuela to the Maritime provinces do not use this.

Senator Kinley: I believe they raised their prices the other day. The press said they did.

Mr. Lewtas: My instructions are that we have not raised our prices recently.

Senator Thompson: What was your point that the cargo owner has little choice except to the point that ships are covered by the world organizations? Is this the only thing which he can rely on.

Mr. Lewtas: Yes. My point is, with all respect to Mr. Macgillivray, that the addition of the cargo owner to the first level of joint liability will not have a minimal effect on the improvement of the type of ship operating. What will have that effect, and I believe Mr. Macgillivray says it himself, are stringent and effective Government regulations.

Senator Kinley: You said that the ship went aground, but I think she struck a rock in 70 feet of water. I do not know how they found that shoal. It seems to me it was

bad seamanship. Notwithstanding the fact that their electrical apparatus was under repair, most of them now check with the fathometer and the sextant, but this is an unusual happening. Have you any thoughts with regard to this?

These ships which pay low wages prevent us from having a merchant marine of our own, and ships which can be run cheaply are a menace to the country. The question is how much does it cost Canada not to have a merchant marine? Halifax was blown up by a second-hand ship which carried a cargo of TNT. There were barrels of this inflammatory material on deck. The ship was run into by a Norwegian vessel, and sparks ignited the material and caused an explosion that wrecked the city of Halifax. They did not have a good crew nor were they up to the mark.

The registration of companies and ships in Canada seems to be something which is not in the interest of the maritime provinces. We are naturally a seafaring people, and then we have unemployment. Our boys used to go to sea, but now the only merchant marines are found working in the lake regions. We should have a merchant marine in Canada. There is a trinity—the insurance company, the oil company and the vessel. I do not think you can come before any committee and tell it that you have nothing to do with vessels, that vessels have nothing to do with cargoes, and that cargoes have nothing to do with insurance, because I know they are very closely related.

You made an important statement here, that the ships were going to be incorporated. What does that do to the oil companies, or to any ship? Does it relieve them of the responsibility of a shareholder? It is fixed by statute in Canada as to how much one must pay if the ship gets into trouble. If it is incorporated there is no liability, except a special liability which you cannot afford. Fault is very important in regard to insurance matters. When I hire a vessel to take a cargo I expect the vessel to carry it without trouble for myself, but if the vessel is going to carry a cargo which will explode or destroy the country there is a dual responsibility. It seems to me that is the reason that this problem is here with regard to shipping.

This is good legislation. I do not think the expense on oil is very high, nor do I think the obligation on a shareholder who has fault and does something special is very high. It is only 2,000 francs.

Mr. Lewtas: Mr. Chairman, I observed that when we were making our submission last week we were not objecting to the Maritime fund at all.

The Chairman: I believe, Senator Kinley, that you have made your point. You have stated that this legislation would provide means to the minister to introduce proper legislation in order to take care of situations such as you have just cited.

Honourable senators, if it is your intention we may go through the bill clause by clause. Mr. Macgillivray may point out subjects or clauses where the minister may be prepared to introduce a bill at a later date to bring in some amendments.

Shall clause I carry?

Hon. Senators: Carried.

The Acting Chairman: Clause 2 covers Part XIX which is headed "Pollution". Does section 736 in Part XIX carry?

Hon. Senators: Carried.

The Acting Chairman: Mr. Macgillivray, as we come to clauses in respect to which you wish to point out the study the minister is prepared to make, or the amendments which he might be prepared to consider at a later date, you may intervene.

Mr. Macgillivray: Yes, I will. And as we move along if I fail to mention something, please call it to my attention.

The Acting Chairman: Does section 737 carry?

Senator Thompson: With regard to that clause, we have talked of oil in regard to pollution but, as I understand it, the definition can be and is broadened according to the order in council.

Mr. Macgillivray: You will notice that the definition of pollutant is very wide, and in the concluding words of the definition it includes oil and any class of substance that is described by the Governor in Council. Therefore, we can aim at specific pollutants for the purpose of the act.

Senator Rattenbury: This is one of my objections, we are only establishing funds for ships carrying oil and not other possible pollutants.

The Acting Chairman: I understand this will come up in a later section.

Hon. Senators: Carried.

The Acting Chairman: Shall section 738 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 739 carry? This is the section dealing with regulations. Have you any comment on that particular section, Mr. Magillivray?

Mr. Macgillivray: This is a section that has not been commented on by any of the witnesses who have appeared before this committee, although you will have noticed that in the brief of the International Chamber of Shipping which was printed as an appendix to your proceedings, the Chamber repeated before this committee what it said in the committee of the other place—that they are very loath to see such wide regulatory powers taken, and they are afraid that in the application or exercise of these regulatory powers we might proceed unilaterally and not in line with internationally accepted practices. I think in this regard they really will have to wait and see what the regulations look like. It would be very difficult to change this so as to ensure that regulations would be only such as would be accepted internationally.

The Acting Chairman: Shall section 739 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 740 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 741 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 742 carry? Mr. Macgillivray, do you have any comment on this section.

Mr. Macgillivray: Mr. Chairman, we are now into the subject of civil liability which is the subject that has principally engaged the attention of the witnesses who have appeared before this committee. I believe the witnesses representing the oil companies have objected to the inclusion of section 743(1)(b). This is the one which empowers the Governor in Council to prescribe classes of ships in relation to which the owner of a cargo will be jointly and severally liable with the owner of the ship. This is one of the objections that I brought to the attention of the Minister. This is not one of the cases in which we would be prepared to accept an amendment, and in the Minister's undertaking that he would be prepared to consider amendments, I do not think that this is one that would be included. We would certainly have to see a considerable change in the international picture in relation to the civil liability convention and the proposed fund convention before the Minister would be prepared to drop this feature.

Senator Kinley: This was passed by the House of Commons?

Mr. Macgillivray: Yes, and it was passed, I believe, without amendment.

The Acting Chairman: Shall section 743 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 744 carry? This has to do with the limitations and liability. Do you have any comments on this clause, Mr. Macgillivray?

Mr. Macgillivray: Mr. Chairman, if I may just revert to section 743 for a moment, I said I thought it had been passed without amendment but actually there was an amendment in the Commons committee where subsection (5) was added at the top of page 13. This again is not a matter that has been brought specifically before this committee by any of the witnesses. It is not a matter which has caused any objections.

Senator Thompson: Mr. Chairman, I would like to state that I appreciate it appears that the purpose of joint responsibility is to make the cargo owner equally responsible. I think the points raised by the witnesses were based on the fact that the joint responsibility could lead to redundancy in the area of insurance costs. The liable person is the ship owner. I notice the points raised about this concerned the danger to the environment, particularly the one raised by Senator Kinley about high explosives in Halifax and that the cargo owner should share in the responsibility. Has that principle been applied before that where high explosives are involved, the cargo owner shall share responsibility?

Mr. Macgillivray: There is a precedent in the case of nuclear cargo. That is a very recent precedent in Canada having been brought into law in the last session of Parliament. It was the first legislation dealing with liability in the case of disastrous incident, and it was a case of focusing liability on the one person who can carry the insurance. The principle was first initiated in international discussion about 10 years ago in a previous Brussels Convention on the liability of owners of nuclear ships where absolute liability was for the first time a feature of an international convention.

The Acting Chairman: Do you have any comments on section 744, Mr. Macgillivray?

Mr. Macgillivray: This is a clause which has attracted a good deal of attention and created a considerable amount of interest on the part of all the witnesses who have appeared here. Mr. Brisset made a recommendation to the committee that you consider an amendment that would provide for the procedures to be followed in limitation proceedings. This is one of the points that the Minister has agreed he will be prepared to come forward with and bring an amendment before the end of the year that will tidy things up so that we can proceed with the bill and get the desirable features of it into law.

Senator Kinley: In the meantime he wants it carried?

Mr. Macgillivray: Yes.

Senator Kinley: And he will look after it afterwards?

Mr. Macgillivray: Yes.

The Chairman: I believe there may be other points raised relating to section 744.

Mr. Macgillivray: Yes. There were points raised by the four representatives of the oil companies. I think they were unanimous in wanting to allow the owner of the cargo to limit his liability even in the case where a ship owner loses the benefit of limitation by reason of his fault or privity.

This is a matter that is under consideration and is one to which the minister is inclined to give favourable consideration in connection with a proposed amendment later in the year.

Senator Bourget: What would be that amendment?

Mr. Macgillivray: It would clarify the situation. Under the law as it stands a cargo owner, when he is made liable, will not have the limitation when the ship owner loses his right of limitation. It will be a clarifying amendment, that where an accident occurs and damage is such that limitation comes into question, and there is this joint, several liability, the cargo owner would be entitled to limit his liability in relation to the tonnage of the vessel even if the ship owner loses his privilege of limitation due to the fact that he is personally at fault.

Senator Bourget: That is assuming negligence is on the part of the ship owner?

Mr. Macgillivray: Yes, sir, the owner's negligence as distinct from negligence of the people on board the ship.

When the people on board the ship, those navigating it, are at fault, the owner is still liable, but he may limit; but when he is party to the fault or actively is at fault himself then he is not entitled to limit.

The oil companies have asked this committee to clarify that they will be entitled to limit whether or not the ship owner is at fault. They have also asked for the provision to be inserted that they would have a right against the ship owner when recovery is made against the cargo owner. If the damaged person feels that it is easier to sue the cargo owner and he recovers the damage, the cargo owner wants to have a right over against the ship owner. This is another matter which I think the minister would be prepared to consider in the proposed amendment.

Senator Kinley: It is a bit intricate.

Mr. Macgillivray: Yes, it is extremely intricate.

Senator Kinley: I hate to interfere with the minister's bill unless he says so, because it is very technical.

The Acting Chairman: Are there any further comments?

Mr. Macgillivray: Mr. Brisset asked also that the ship owner, or the cargo owner, I take it, who has paid out damages arising from an incident, or who has gone to some expense in cleaning up or has taken preventive measures, should be in the same position as that of a claimant against his own limitation fund. His liability would be somewhat reduced by reason of the fact that either he has already paid claimants or he has gone to the expense of mitigating the damages. This is another feature.

While I am not in a position to promise that that aspect will be included in the minister's amendment, it is definitely being actively considered.

Mr. Brisset also asked that the insurer should be allowed the same defences as the insured, and also a further defence if the ship owner willfully causes the accident. From my own reading of the bill I do not consider this to be a necessary amendment. In the event that there is action against the insurance company I believe the insurer would be given the same defences as the insured and the same limitation.

Senator MacElman: He has always had that.

Mr. Macgillivray: Yes, and I do not think this changes that. Certainly, if he does not have it, then we are open to persuasion, and this could be a feature of the proposed amendment.

The Acting Chairman: Are there any further comments on section 744?

Senator Thompson: Captain Hurcomb raised the point that the United States was far more specific in its legislation in covering the exceptions. I think that Mr. Macgillivray in evidence said he would take note of that.

Mr. Macgillivray: Yes, that is true. I think we are back to the previous section. I should have mentioned this point, and perhaps I could do so now.

The Acting Chairman: Yes, you may.

Mr. Macgillivray: I brought this point to the attention of the minister, but the fact is that the exceptions contained in section 744(4) are those contained in the Brussels Convention and which were recommended to the committee of the other place and accepted by that committee. We would be out of line with the Brussels Convention and with the majority of the rest of the world if we changed this.

Senator Thompson: There has been some talk about the St. Lawrence Seaway and trying to get mutual agreement with the United States. I understand that the United States has one further exception. Do you see advantages in our trying to make arrangements with the United States if we had the same exceptions they have?

Mr. Macgillivray: In our discussions with the United States we will be looking at this aspect. There are other points made by Captain Hurcomb, but we will deal with them when we come to the other sections. This exception on the basis of the negligence of another party would virtually destroy the intent of this part of the bill.

The Acting Chairman: Is there anything further on this section?

Mr. Macgillivray: I believe I have covered the points raised by the various witnesses.

The Acting Chairman: Shall section 744 carry?

Hon. Senators: Carried.

The Acting Chairman: Have you any comment on section 745, evidence of financial responsibility?

Mr. Macgillivray: With respect to this clause there was a point raised by Captain Hurcomb to the effect that Canadian ships passing through United States waters in the Great Lakes are required to file proof of financial responsibility in the United States. Under this clause they will be required to file proof of responsibility in Canada. That point was also raised by the International Chamber of Shipping.

As I said in my opening remarks today, Mr. Chairman, it is going to be necessary for Canada to work out some compatible legislation with the United States. We do intend to get into discussions with them at the earliest possible date.

Another point Captain Hurcomb raised was that while the Canadian ships are required to prove financial responsibility in the United States when they are passing through United States waters and are not calling at a U.S. port, this bill does not provide for United States ships to have to prove financial responsibility when they are merely passing through Canadian waters and not calling at our ports. The minister is prepared to consider bringing that matter forward with the amendments later. However, when the discussions between the United States and Canada have taken place it may be that the picture will have changed such that this aspect will become immaterial. In other words, we may be able to work out a common system of proving financial responsibility.

The Acting Chairman: Shall section 745 carry?

Hon. Senators: Carried.

The Acting Chairman: Are there any comments on Section 746?

Mr. Macgillivray: A number of the witnesses refer to this clause as the "secondary liability of the cargo owner" clause, with respect to their having to pay into this fund.

This matter also comes under section 757, but it is as well to deal with it here since it does refer to payments in.

Th minister is not inclined at this stage to consider withdrawing this provision. We will have an opportunity to see how the CRISTAL Fund works after April 1. We will have an opportunity to consider the progress that is being made on the International Fund as things proceed in London in preparation for the November conference on the subject. It may be that there will be some modifications that could be suggested to the National Fund by the time we come back before Parliament. But at the present time it seems pretty clear that we are intending to maintain a fund, because there are exceptions to liability and there are limits to the amounts that you can recover from any international scheme. Therefore, it is quite likely that we will want a fund that will cover the excess of that.

The Acting Chairman: Shall section 746 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 747 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 748?

Hon. Senators: Carried.

The Acting Chairman: Section 749?

Hon. Senators: Carried.

The Acting Chairman: Section 750?

Hon. Senators: Carried.

The Acting Chairman: Section 751?

Hon. Senators: Carried.

The Acting Chairman: Shall section 752 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 753?

Hon. Senators: Carried.

The Acting Chairman: Section 754?

Hon. Senators: Carried.

The Acting Chairman: Section 755?

Hon. Senators: Carried.

The Acting Chairman: Section 756?

Hon. Senators: Carried.

The Acting Chairman: We now come to section 757 and I understand Mr. Macgillivray has a few comments to make with respect to it relating back to section 746.

Mr. Macgillivray: There have been a number of points raised in connection with payments into the fund. First, it has been suggested that there should be a limit on the fund of possibility $10 million. That point has been considered by the minister and was considered previously by the Government. It was the Government's decision not to place a limit on the total amount of the fund.

There was also a suggestion that the claims fund should be brought into force by proclamation so that, recognizing that we have not had time to study it, we would have time to study the new CRISTAL scheme. I think this is an amendment the minister would not want to see. You might note, however, that the fund will not come into being until an Order in Council is passed under this section specifying the amount to be paid into the fund. So there could, in theory, be time to delay the bringing into operation of these provisions.

Senator Kinley: The act would not come into force, except section 745, until a day fixed by proclamation. So that is covered anyway.

Mr. Macgillivray: Yes, that is right, sir, but, of course, it is the intention of the Government to bring the act into force at as early a date as possible because of the fact that there are so many desirable features of it.

Other points were made by the oil company witnesses here, which I brought to the attention of the minister. There was a suggestion that claims for damage by pollutants other than oil should not be paid out of the fund until such time as we have set up a scheme for contributions to the fund in respect of these other pollutants.

Senator Kinley: Oil includes the derivative gasoline and other things?

Mr. Macgillivray: Yes. There is a wide definition of "oil". It is not yet clear whether this would be one of the amendments the minister would be prepared to bring forward at a later date. I do not think it needs an amendment anyway.

The Acting Chairman: There are the regulations.

Mr. Macgillivray: Yes, it would need an amendment.

Senator Rattenbury: We are discussing section 757 now?

Mr. Macgillivray: Right. In a later clause we will see that there is provision for regulations to be made respecting payments into the fund.

The Acting Chairman: I believe section 758 (b) would cover that point.

Mr. Macgillivray: Yes, that is the one. The suggestion was that there should be no claims paid out of the fund for pollutants other than oil until such time as we had a scheme for having the other contributions in respect of

those other pollutants. I think it must be recognized that so far the only pollutant that would be covered by this is oil. Oil now constitutes 60 per cent of ocean commerce, and the amount seems to be going up every year. Oil is the thing we must get at first, but I cannot say this is an amendment the minister would be prepared to bring forward.

Senator Rattenbury: Mr. Macgillivray, I am cognizant of cargoes being carried into Canada, such as chemicals from the United Kingdom, that are possible pollutants and equally as dangerous as oil.

Mr. Macgillivray: This is an area of very serious concern to the Government, not only to our Government but to other governments. A group of experts was organized by a number of the international organizations, including IMCO, to make a report identifying the other pollutants that are being carried by ship. They have now produced a report and they list some hundreds of them that are being carried, some in bulk and some in packages. Some of those carried in packages are just as dangerous as if they were in bulk. New chemicals are being created at the rate of some hundreds per year, I think 300 per year, and there is a need for every one of them to be studied to see whether it is a pollutant. There is a big job of work to be done in identifying these other pollutants and bringing in restrictive regulations in respect of them. I must confess that the work has only begun on this, not only in Canada but throughout the world.

Senator Rattenbury: I am perhaps thinking in broad terms, but one cause of what we might term a disaster would be the carriage of sulphuric acid into a pulp mill.

Mr. Macgillivray: Yes, sir, or the carriage of phosphorous into Placentia Bay. It is going on, and one provision in this bill will allow us to regulate tank washings from the ships, because we found that ships bringing phosphorous into Placentia Bay were washing their tanks shortly after leaving it and causing damage to the fisheries.

Senator Rattenbury: That is right.

Senator Kinley: They kill the fish.

Senator Rattenbury: It seems to me that perhaps we could be a little insular in our approach to this problem.

The Acting Chairman: In section 758(c), dealing with regulations, the bill provides authority for the minister to take care of such other pollutants than oil. We will come to it after we pass this section.

Senator Rattenbury: I have read that, but I do not quite agree with you, Mr. Chairman.

The Acting Chairman: Are there any further comments on section 757?

Mr. Macgillivray: I may not have mentioned all the points raised by the witnesses, but I should say that every one of them has been brought to the attention of the minister, and every one of them will be considered in connection with a bill later in the year to improve this legislation.

Senator Kinley: The minister does not want us to delay this bill.

Mr. Macgillivray: That is right, sir.

The Acting Chairman: Shall section 757 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 758 deals with regulations, which we discussed partly with section 757. Shall section 758 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 759, dealing with interest on unpaid amounts. Shall section 759 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 760. Are there comments on this, Mr. Macgillivray?

Mr. Macgillivray: This is the section in respect of which Mr. Phillips, on behalf of Gulf Oil, suggested that payments should not be made out of the fund in respect of claims for damage by pollutants other than oil until we have contributions by those. This will be considered. The minister really has not made up his mind whether he would favour that or not.

The Acting Chairman: Shall section 760 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 761.

Senator Kinley: These are the penalties. They are good and high, and perhaps they need to be.

The Acting Chairman: Shall section 761 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 762 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 763 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 764 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 765 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 766 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 767 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 768 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 769?

Senator Kinley: This deals with seizure. This is where you seize the ship, is it not?

Mr. Macgillivray: Yes, sir, it is in effect the arrest of a ship similar to civil arrest.

Senator Kinley: We have signed a convention which carries us out 100 miles. Can we seize a ship over the 12-mile limit?

Mr. Macgillivray: No, sir.

Senator Kinley: How do we collect under this international arrangement?

Mr. Macgillivray: That is one of the defects of the international convention on the prevention of pollution by oil, that prosecution has to be in the country of registry, unless the offence takes place within the national waters of another country, and this has just not yet been cured.

Senator Kinley: I think England voted against us on that. George's Bank is one of our great fishing grounds. If vessels go across that bank and clean the scuppers coming across the bank and go into Portland, they are coming right across the fishing grounds of Canada. It is very important that we keep these waters clean. When we pass this bill, it is a regional matter; it does not apply to the Pacific coast. One senator claimed its effect went up and down the coast, but I think this has been amended since. Is that not so, Mr. Macgillivray?

Mr. Macgillivray: There have been a number of amendments.

Senator Kinley: Did they extend it out from Newfoundland and Nova Scotia?

An hon. Senator: The lines were drawn, were they not?

Mr. Macgillivray: This is not a matter of drawing the fishery closing lines. This is an international agreement under which countries agree to prohibit their ships pumping oil into the high seas and the limit is 100 miles off the Atlantic coast in that case.

Senator Kinley: I understand it ran along a certain parallel, I think it is south of 60 degrees, is it not, and it just touches the shoal part of Newfoundland. We understood that that was passed. I remember when it was passed, as I was in Parliament when it was passed. Some of them wanted a thousand miles. Great Britain wanted 1,000 miles, into the Mediterranean, because of the hazard of shipping. We always felt we did not get enough in Nova Scotia. I hope we can convince the United States that we have a common interest in the fishing and that they will help us out at the next conference.

Mr. Macgillivray: The recent developments are such that we can look forward to vast improvements in that convention. The United States has taken the official position that they want to achieve by 1975 the complete elimination of all pumping of oily wastes into the oceans of the world.

The Acting Chairman: Shall section 769 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 770 carry?

Hon. Senators: Carried.

The Acting Chairman: Part XIX is covered entirely by clause 2 of the bill. Shall clause 2 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Acting Chairman: This completes all the clauses of the bill. Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Kinley: Mr. Chairman, we should understand that this concerns foreign shipping foreign oil, and foreign insurance. There is no Canadian interest in it, except the price of oil.

The Acting Chairman: Thank you, Senator Kinley. Thank you, Mr. Macgillivray. I also wish to thank the witnesses who have appeared, and who have given us such valuable information regarding this bill.

The committee adjourned.

APPENDIX

TO:—BP OIL LIMITED MONTREAL 995 22.3.71

FROM:—BP TC

FOR MR J LANGELIER FROM LEGAL AND CLAIMS P.A. MEDCRAFT BILL C-2 YOUR TELEX 18TH (STOP)

QUESTION OF REPONSE OF CRISTAL TO CLAIMS IF BILL C-2 BECOMES LAW IN PRESENT FORM HAS BEEN CLOSELY CONSIDERED BY OCIMF WORKING GROUP TODAY (STOP) B.A. DUBAIS, CHAIRMAN OF THE BOARD OF THE OIL COMPANIES INSTITUTE FOR MARINE POLLUTION COMPENSATION LIMITED ADVISES AS FOLLOWS

QUOTE YOU WILL APPRECIATE THAT CRISTAL IS A VOLUNTARY AGREEMENT AND ITS APPLICABILITY AND ITS INTERPRETATION WILL BE DECIDED IN ANY CASE BY THE INSTITUTE (STOP) HOWEVER ITS BASIC OBJECTIVE IS TO SUPPLEMENT TANKER LIABILITY (STOP) IF SOME OTHER SOURCE OF COMPENSATION CREATED BY LAW SUPPLEMENTS THAT TANKER LIABILITY THERE OBVIOUSLY IS NO AREA FOR CRISTAL TO OPERATE (STOP) OUR PREVIOUS ADVICE THAT NO PAYMENT WOULD BE MADE BY CRISTAL IS CONFIRMED AND WOULD REFER YOU PARTICULARLY TO ARTICLE IV (B) (STOP THIS ADVISE IS GIVEN BECAUSE BILL C—2 PROVIDES THAT CLAIMANTS HAVE RIGHT OF RECOVERY FROM SHIPOWNER AND CARGO OWNER UNDER SECTION 743 AND TO THE EXTENT THAT CLAIMS ARE NOT SATISFIED CLAIMANTS ARE ENTITLED TO RECOVER FROM MARITIME CLAIMS FUND UNDER SECTION 753 WITHOUT LIMIT (STOP) BLL C—2 HAVING GIVEN CLAIMANTS SUCH LEGAL RIGHTS CRISTAL BY ITS TERMS WILL NOT RESPOND (STOP) UNQUOTE

P.A. MEDCRAFT
CHAIRMAN, OIL COMPANIES INTERNATIONAL MARINE FORUM

TO BP OIL LIMITED MONTREAL 4 23.03.71

FROM BPTC LONDON

URGENT

FOR J LANGELIER FROM P A MEDCRAFT YOUR TELEX 22ND RECEIVED (STOP) WE CONFIRM THAT IF LIABILITY OF EITHER SHIPOWNER OR CARGO OWNER IS UNLIMITED UNDER SECTION 744 (4) (D) DUE TO ACTUAL FAULT OR PRIVITY THAN NO PAYMENT WILL BE MADE BY CRISTAL (STOP)

LETTER FOLLOWS CONTAINING TEXT OF STATEMENT GIVEN IN PREVIOUS TELEX AND CONFIRMING THIS TELEX

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 5

THURSDAY, MAY 27, 1971

Complete Proceedings on Bill S-21,

intituled:

"An Act respecting Canadian Pacific Railway Company"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23696—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Blois
Bourget
Burchill
Connolly (*Halifax-North*)
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinley
Kinnear
Langlois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Rattenbury
Robichaud
Smith
Sparrow
Welch—(25).

**Ex officio members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 25th, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Sparrow moved, seconded by the Honourable Senator Boucher, that the Bill S-21, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Boucher, that the Bill be referred the Standing Senate Committee on Transport and Communications.

The question being put on the motiin, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

23696—1½

Minutes of Proceedings

Thursday, May 27, 1971.
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11:05 for the consideration of Bill S-21 intituled: *"An Act respecting Canadian Pacific Railway Company"*.

Present: The Honourable Senators Haig, (*Chairman*), Burchill, Denis, Flynn, Kinnear, McElman, McGrand, Michaud, Molson, Rattenbury, Smith and Sparrow—(12).

Also present but not of the Committee: The Honourable Senator Boucher.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Molson, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

CANADIAN PACIFIC RAILWAY COMPANY

Mr. Paul B. Tetro, Legal Counsel and Parliamentary Agent;

Mr. R. S. Allison, Vice President, Prairie Region;

Mr. J. F. Condon, Vice President and member of the Board of Directors of the Athabasca Forest Industries Limited;

The Honourable D. G. Steuart, Deputy Premier and Provincial Treasurer of the Government of Saskatchewan;

Mr. G. E. Boyhan, Chief Engineer, Athabasca Forest Industries Limited.

On motion of the Honourable Senator Rattenbury, it was

Resolved to report the said Bill without amendment.

At 12:05 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, May 27, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-21, intituled: "An Act respecting Canadian Pacific Railway Company", has in obedience to the order of reference of May 25th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

Minutes of Proceedings

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, May 27, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-21, respecting Canadian Pacific Railway Company, met this day at 11 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Acting Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we discuss Bill S-21, respecting the Canadian Pacific Railway Company. Mr. Paul Tetro, the Parliamentary Agent, will introduce the witnesses.

Mr. Paul Tetro, Parliamentary Agent: Thank you very much, Mr. Chairman. Honourable senators, there will be three witnesses whom we would like to present this morning, and I will introduce them to you now. On my right is Mr. Russell Allison, the Vice-President of the Prairie Region of the Canadian Pacific Railway Company; he is the chief company officer directly responsible for this proposed branch line. On his right is Mr. Joseph F. Condon, who is a member of the board of directors, and a Vice-President of Athabasca Forest Industries Ltd., the company which proposes to build a pulp mill in Northern Saskatchewan, which would be served by this branch line of the railway. On his right is the Honourable D. G. Steuart, who is a member of the board of directors of Athabasca Forest Industries Ltd., and the Deputy Premier and Provincial Treasurer of the Government of the Province of Saskatchewan.

Mr. Allison, in his opening remarks, will deal with matters pertaining to the construction of the proposed branch line of railway and its operation. Mr. Condon will deal with matters pertaining to the proposed mill complex and the marketing of its products. Mr. Steuart will deal with matters pertaining to the economic and sociological impact of the proposed mill, that will be constructed if the proposed branch line of railway can be built.

The bill that is before this committee is S-21. I believe, honourable senators, that it is in the normal form that many applications of this nature have taken in the past. You have had a most complete introduction to it by Senator Sparrow, at second reading. If it meets with your concurrence, Mr. Chairman and honourable senators, we would like to ask, in the order indicated, each of the three witnesses to make a short introductory statement. This will give you a broad picture of the proposed branch line of railway, the pulp mill complex that it is proposed to serve, and its effect upon particularly the Province of Saskatchewan but also Canada as a whole. Mr. Allison, please.

Mr. R. S. Allison, Vice President, Prairie Region, Canadian Pacific Railway Company: Mr. Chairman and honourable senators, this presentation covers the construction of 62 miles of branch line from the subdivision known as Meadow Lake Subdivision, 62 miles north to a complex proposed to be constructed, known as Athabasca Forest Industries Ltd. I believe you have a copy of this plan before you. There is a small inset here which shows you in red the 62 miles of branch line from Meadow Lake Subdivision at a place called Sergent. Sergent is 18 miles east of Meadow Lake and about 136 rail miles northwest of Prince Abert. For orientation purposes, that is about 100 miles north of North Battleford. Subject to the approval of Parliament at its current session, we will proceed with the construction of this line.

There are no particular problems in the construction and no undue difficulty. The line itself traverses relatively flat land, from Sergent to the mill complex, and for the 62 miles the line descends gradually northwards, the difference in the elevation bieng about 210 feet.

The ground is mostly sandy. There is some gravel, not much. For the first 12 miles, the line travels through slightly cleared land and some cultivation and beyond that is a little more rolling as we go northward with increasingly dense timber cover. There is a bit of muskeg, not too much, a maximum of about 10 feet in depth.

The rail line itself is of the order of a maximum of 1 per cent compensated. There are three bridges involved. One of them crosses the Chitek River about 1.2 miles north of Sergent. The approach there will be a 103 foot span with a timber flanking span on each side. Then at the Beaver River crossing about 19.3 miles north of Sergent, there will be two 103-foot steel spans, with a flanking timber span on either side. The third river is the Waterhen, at mileage 41.3, and it is a 100-foot steel span with two flanking timber spans.

The survey work and engineering work on the line is substantially complete and it is most important to get the construction of this line under way to take advantage of the favourable summer construction weather conditions.

As to the land, the right of way, for the 62 miles of railroad, 93 per cent of the right of way is owned by the Province of Saskatchewan and about 700 acres is involved. There is no problem regarding that. We have

an agreement with the Province of Saskatchewan covering the property. They have some ten leaseholders who occupy about 122 acres of this 700 and arrangements have been made with the leaseholders.

The remaining 7 per cent of the property required for the right of way is privately owned and at present is under option by Canadian Pacific Railway. There will be no expropriation of lands involved in order to acquire the right of way.

The cost for the 62 mile branch line is estimated at $6½ million. It is estimated that a work force of approximately 300 people will be employed in the construction of the line. The target date for completion of the line is June 30, 1972

It is estimated that when the mill reaches capacity there will be an inbound tonnage to the mill of approximately 200,000 tons a year. That will consist of chemicals such as saltcake and limestone, and there will also be some fuel oil. The total tonnage will be about 200,000 tons.

Outbound from the mill there is an estimated annual tonnage of 450,000 tons which will consist mainly of pulp. There will also be some tall oil and turpentine. In addition, there will be some miscellaneous traffic and the railway will be used to bring some of the construction materials in to the site.

Due to the geographical location of this mill in northern Saskatchewan, and the nature and the volume of the product produced, the distance to market and the climatic conditions, a railroad is the only economically feasible mode of transport to and from this site.

Mr. Tetro: Honourable senators, I would like to call upon Mr. Condon, please.

Mr. Joseph E. Condon, Vice President, Athabasca Forest Industries Ltd.: Mr. Chairman and honourable senators, the Athabasca Forest Industries Ltd. is a Saskatchewan corporation incorporated in Saskatchewan for the purpose of constructing and operating a pulp mill in the vicinity of the confluence of the Beaver and Doré rivers, in northern Saskatchewan, for the production of bleached Kraft pulp. The mill complex will be constructed at a total cost of $117.7 million, of which $10 million will be expended on effluent control.

The design and preliminary engineering work for the mill have been completed and we are ready to commence construction. The final signal will be the approval by Parliament of the application of Canadian Pacific Railway Company to construct the line from Meadow Lake to Doré Lake.

Construction is scheduled to be completed by late 1973, with the start up of the mill immediately thereafter. We are scheduled to reach full production within three years after the start-up.

Athabasca has reached agreement with the Department of Natural Resources of the Province of Saskatchewan for a management licence covering 23,300 square miles of land to supply the wood pulp fir the proposed mill. Athabasca will employ silviculture and harvesting methods to ensure a perpetual timber supply for all of the mill's requirements.

The world market for bleached kraft pulp is expanding at a satisfactory rate that will absorb the production capacity of this new mill. In fact, paper consumption which is today in terms of world consumption at 130 million tons per year is projected by the North American Pulp and Paper Association and the Scandinavian Pulp and Paper Association to expand to 280 million tons by 1985, which is more than double the present demand.

Now, this is a market pulp mill, and market pulp, specifically, is today at 9 million tons and is projected to expand to 15 million tons by 1975. That is an expansion of 820,000 tons a year, which will more than absorb the capacity of the Athabasca pulp mill.

Assuming a sales price of $172 per short ton and the rated capacity of 450,000 tons per year, annual sales will be approximately $77 million.

I should like to point out that all of these sales are to the United States and to world markets and therefore the sales will be a major contribution to a favourable Canadian balance of payments.

Athabasca has now concluded satisfactory arrangements with the Canadian Pacific Railway Company for construction of this line, subject, of course, to the approval of Parliament. Because of the long distances involved, because of the nature and volume of the product, because of the severe climatic conditions prevailing in northwestern Saskatchewan, we believe that railway transportation is the only economic and feasible means of transportation for incoming and outgoing products of this new mill. We are also convinced—and Mr. Steuart will address himself to this subject—that the new mill will have a major impact upon the economy of Saskatchewan. Thank you.

Hon. D. G. Steuart, Deputy Premier and Provincial Treasurer, Government of the Province of Saskatchewan): Mr. Chairman and honourable senators, to fully appreciate the significance of the Athabasca pulp mill project in northwestern Saskatchewan it is necessary to have an awareness of the region, its problems and its potential.

The major communities in this area are Meadow Lake with a population of 3,300, La Loche with a population of 1,250, Buffalo Narrows with a population of 1,200 and Ile A La Crosse with 1,150 residents. In addition, there are 550 people in Beauval and 540 people in Green Lake. Approximately 80 to 90 per cent of the people are of native ancestry. Without exception, the largest single source of income in these communities, and, indeed, throughout the whole area, is social aid. This is not a criticism of, nor a reflection on, the people of the northwest part of the province. They are, in fact, victims of circumstances, living in an area which is at this time devoid of job opportunities.

At various times in the past efforts have been made to resolve the problem by moving some of these people into

the more developed regions in the southern part of the province. This has met with only indifferent success since, for the most part, the Indians and Métis of the north are unhappy when they are removed from their familiar environment. They find difficulty in competing with white people for skilled jobs in the cities. They meet with a lack of acceptance and consequently they swell the ranks of the unemployed in the southern part of the province.

This is one of the major reasons why the government of Saskatchewan has exerted so much effort to bring a second pulp mill to Saskatchewan. We recognize the need to provide job opportunities for our disadvantaged citizens and we believe that it is desirable to provide those jobs in the area in which these people reside. We are not proposing the establishment of this mill as an alternative to existing opportunities for employment. The only alternative is wide-spread unemployment and continued dependence upon social aid.

The company is committed to hire, to a minimum of 20 per cent, persons of Indian and Métis extraction, and, in fact, will hire a much higher percentage than that. One of the prime difficulties encountered by these people is that they lack the training to obtain employment in the skilled trades. To overcome this problem, the government, the company and the unions have agreed to initiate an apprenticeship program so that the people of the area may develop the necessary skills through formal training and on-the-job work training and experience.

In addition to the jobs which will be provided during the construction of the mill, many more jobs will be provided to construct the highway to the mill site and in building the railway now under discussion. When the mill comes into operation, full-time employment will be provided both in the mill and in the woods operation. The company has indicated that a minimum of 480 persons will be provided with work directly in the mill itself. We believe that this is a low estimate and that actual employment figures may run as high as 550. About another 700 persons will be given employment in the woods operation, and there will be 500 to 600 jobs developed in the townsite. In total we think there will be a minimum of 1,500 to 1,800 jobs generated directly in the mill and ancilliary services and then there will be the added jobs that come from other services that come into the area to back up and supply the mill.

The economic impact of the mill will not, however, be confined to the immediate area in which it is located. It is estimated that the Athabasca mill will spend more than $45 million annually in Saskatchewan.

It is estimated also that 75 per cent to 80 per cent of the equipment for the pulp mill will be purchased in Canada and that of the total capital costs over the next 30 months Athabasca will spend $105 million in Saskatchewan and the other provinces of Canada.

One major factor which must not be overlooked is the importance of this project in assisting in the diversification of the economy of our province. We are painfully aware of the problems which are inherent when our economy is dependent upon wheat crops, world markets and world prices.

One question which will inevitably be asked is, "What impact will the new pulp mill have on the tourist industry in the area?"

As a matter of fact, the tourist industry in that area at the present time provides employment only in nine camps for 60 people on a part-time basis. One of the reasons why there is such limited development in this tourist-recreation industry is that there has been a lack of roads to provide access to the areas.

The agreements call for payment of an additional fee for fire protection, a factor which will be of immeasurable benefit to the tourist industry as well as for the protection of the forest resources in this area.

We believe that the establishment of this pulp mill will prove to be a boon to the tourist industry and that areas previously inaccessible will be opened up to provide recreational facilities for the people of this province and other parts of Canada as well.

Another area of great concern is the impact of the proposed mill upon the environment. Let me make the position of the government of Saskatchewan abundantly clear. We are not unaware of the tragic loss which would ensue if the pulp mill were allowed to pollute our northern water. Indeed, we are probably more aware of this than any other group in the country. That is why we have commissioned not just one but two major consulting firms to advise us concerning the precautions that must be taken to protect these waters. On top of that we have the staff of the Saskatchewan Water Resources Commission presently examining our proposal in every detail. Incidentally, this independent body is headed up by a judge. We have also established the Saskatchewan Clean Environment Authority to exercise control over each and every potential contributor to pollution.

On top of that we have the staff of the Saskatchewan Water Resources Commission and they are examining our proposal in every detail. This, incidentally, is an inependent body headed up by a judge.

We have also established the Saskatchewan Clean Environment Authority to exercise control over each and every potential contributor to pollution. In fact Saskatchewan pollution control requirements are extremely high and they must be met by this new mill.

I can assure you that unless and until we are satisfied that adequate precautions have been taken to protect our environment, our lakes and our rivers, and until the federal Department of Fisheries is similarly satisfied, the mill will not be allowed to operate. To give you one example, of the $117 million capital cost, we have allocated $10 million for pollution control. We are also taking, as Mr. Condon pointed out, adequate measures to assure the reforestation and the regeneration of the forests in that area.

In summary, the Government of Saskatchewan is vitally interested in this project because of the training and

employment opportunities which it will provide to the disadvantaged people of northern Saskatchewan, because of the economic and financial benefits which will accrue to this province and to the whole of Canada, and because it will facilitate diversification of our economy. The construction of this branchline is an integral part of the whole project and is essential to the feasibility of the project. It is of tremendous importance that an early decision be made since major construction of the mill is dependent upon railway access.

Thank you very much.

Mr. Tetro: Mr. Chairman and honourable senators, this concludes the statements by all of our witnesses and now we are open to questions from you.

Senator Molson: Mr. Chairman, my knowledge of geography to the northwest of this area shown is vague. The watershed from Beaver River and the north there goes ultimately where?

Mr. Condon: To the Churchill River system and eventually into Hudson Bay.

Senator Flynn: Will the mill produce only pulp or will it also produce newsprint?

Mr. Condon: The mill will produce only pulp at this stage.

Senator Flynn: Is it contemplated that it will produce newsprint later?

Mr. Condon: No, a newsprint mill is of a completely different design to that of a pulp mill. It is possible that at a later stage it could be converted to a paper mill but it would not be converted to a newsprint mill.

Senator Flynn: You are optimistic about the market for pulp at this time?

Mr. Condon: Yes, we are optimistic about the turn in the market after 1972. The pulp and paper industry, as you know, is a highly cyclical one which a year ago was at its peak and presently is in a valley. According to projections made by the North American Pulp and Paper Association and the Scandinavian Association and such institutions as the Stanford Research Institute, those projections show that by 1972 and certainly by 1973 when this mill will come on stream, the market will again be strong both in demand and in price structure.

Senator Flynn: Do you foresee that you will sell that pulp or most of it to the central United States?

Mr. Condon: A large proportion, perhaps 60 per cent will be sold in the United States market and 40 per cent will be sold in the European market and in Japan.

Senator Burchill: What you have said is good news to me because I come from a province where our kraft mills are having a terrible time. They cannot sell their produce, and the men are out of employment and they are very unhappy.

Mr. Condon: You are quite right.

Senator Burchill: I know how important this mill is for the Province of Saskatchewan. What I am concerned about is the marketing of your product.

Mr. Condon: You are quite right. There are a number of mills in North America today that are suffering because of the market, because of the sales price on pulp and paper products. There are two other factors that we feel are to our advantage. First, of the older mills, obsolete sulphite mills in particular, are being closed because of the ecology problem. Secondly, Scandinavian mills are being integrated. So we feel quite confident that by 1972-73 the demand for these products will be so strong that we will have no problem in marketing the pulp.

Senator Burchill: What is the daily capacity of this mill?

Mr. Condon: The daily rated capacity is 1,400 tons per day.

Senator Burchill: What will you use—spruce?

Mr. Condon: We are using spruce, jack pine, and also some hardwoods.

Senator Burchill: You would need about 1,500 cords a day?

Mr. Condon: Yes, sir.

Senator Burchill: You have plenty of wood.

Mr. Condon: We have had a number of studies carried out by the fact-finding commission appointed by the Government of Saskatchewan and other consultants, which indicate that there is sufficient wood in the management licence area to supply all of the wood requirements in perpetuity for this mill.

Senator Burchill: What is your estimate of the cost of that wood for the mill?

Mr. Condon: Our estimate of the cost delivered to the mill is approximately $23 a cord.

Senator Rattenbury: I think Mr. Condon quoted a price of $172 per ton. Is that the delivered price?

Mr. Condon: Yes, that is the delivered price, including freight.

Senator Rattenbury: Delivered where?

Mr. Condon: That price is based upon prices delivered to the US paper customers, which in fact we had been receiving for all of our premium grade pulp from the Prince Albert pulp mill. We have these statistics from our Prince Albert sales on which we base the costs involved in this mill and that evidence is as good as we can provide.

Senator Rattenbury: What is the name of the other mill?

Mr. Condon: Prince Albert mill.

Senator Rattenbury: Is that a bleach pulp mill?

Mr. Condon: Yes, the same kind of mill as this one. It will use the same wood and will produce the same quality pulp.

Senator Rattenbury: Did I interpret your remarks correctly when you said that mechanical pulp is on the way out and that there is an ever increasing demand for bleach pulp?

Mr. Condon: I was not referring specifically to mechanical pulp. That is a process rather than a description of the type of pulp. The manufacturing process that I referred to is the sulphite process versus the kraft process. Almost all modern pulp mills, because of the economics involved, use the new kraft system, which is related to the recovery of chemicals, which permits more economic production.

Senator McElman: Did I understand you to say that the management licence took in 23,000 square miles?

Hon. Mr. Steuart: Yes, 23,000 square miles. The Prince Albert pulp mill, for example, has 18,000 square miles. One of the problems up there is that our trees to do not grow as close together as those in the rest of Canada. We need to set aside a very large area. Inside this area there are some provincial parks and many lakes. It is a bit of an exaggeration to say there will be 23,000 square miles. That is the total area set aside. That is what is necessary to ensure production at this mill in perpetuity.

This will be the last pulp mill that we can have. We have one in the Prince Albert area which takes the central northern region of Saskatchewan. This one is in the western region. We have a lumber industry and a chip-board industry on the eastern side. This will be the last pulp mill.

Senator McElman: What is the estimated annual productive growth of this area in perpetuity?

Hon. Mr. Steuart: About 1,250,000 cords, both soft and hardwoods combined.

Senator McElman: Do you feel that this forest is capable of producing this amount in perpetuity, or does this include a reforestation program?

Hon. Mr. Steuart: Both. We think it can produce this in perpetuity. We have about 25 per cent back-up. We think we are on the safe side with about 25 per cent. This will include natural regeneration and reforestation.

Senator McElman: The agreement includes provision for reforestation?

Hon. Mr. Steuart: Yes. We will charge so much a cord and the Government will carry out the reforestation.

Senator Flynn: Does this project, the mill, qualify for some government subvention, provincial or federal?

Hon. Mr. Steuart: Yes. The area has been designated as a special area by D.R.E.E. and we have an agreement from the federal Government that, providing we do all the things we are supposed to do, especially in the sphere of environment and pollution control, we will qualify for the maximum grant. The provincial government is involved to the extent that we are putting in some of the equity capital and we are guaranteeing the senior financing of the long-term loan. As a result we will be 30 per cent equity shareholders in this mill.

Senator Flynn: I thought that under federal legislation pulp and paper mills did not qualify.

Hon. Mr. Steuart: They normally do not, but this is a specially designated area because of the serious unemployment affecting local people.

Senator Rattenbury: In view of what is happening in other parts of Canada regarding provincial parks, and the cutting of trees in provincial parks, will cutting be allowed in this area that you have referred to?

Hon. Mr. Steuart: We do a little cutting in our provincial parks. Our Department of Natural Resources go into the provincial parks and cut on a very selective basis. They do not quite agree with their federal counterparts. They think that the forest is helped by this. The cutting will be minimal and in the best interests of the parkland itself. In effect, there will be very little cutting done and it will be seriously controlled by the Parks Department and the government.

Senator Rattenbury: I agree with that policy.

Senator Sparrow: Regarding the rail line itself, is it anticipated that it will serve in the future any other natural resources industries further to the north?

Mr. Condon: If this line could be extended readily northward to serve any developments that might take place north of the pulp mill site?

Senator Sparrow: Yes. I am wondering if there is further natural resources in the area that may be developed?

Hon. Mr. Steuart: A company called Motka, which is basically a French corporation, has uranium development approximately 100 miles north of there, about 30 miles south of Lake Athabaska, and about 30 or 40 miles from the Alberta border. They have spent a considerable amount of money on developing this uranium mine. We have now agreed to put in a winter road. They have told us that they are not ready to go ahead with the mine, smelter or reducing plant yet, but I met with the Canadian president yesterday, who told me that he was very optimistic. We have great hopes for this project. There is a mineralized area there. We think that the railroad, coming this far north, will tend to open up the great mineralized area that lies north of there. So we think this will just be the beginning of a second stage, which will open up other natural resources north of that area.

Senator Flynn: How far is that from Uranium City or Gunnar?

Hon. Mr. Steuart: I would think 250 or 300 miles.

Senator Flynn: To the end of the line?

Hon. Mr. Steuart: No, the end of that line would be 200 miles, maybe a little more.

Senator Sparrow: Mr. Steuart, you suggest that approximately 20 per cent of the employees would be of Indian ancestry. How many unemployed of Indian ancestry background would there be now in the area from which you can draw? You gave us the population.

Hon. Mr. Steuart: About 95 per cent are unemployed.

Senator Sparrow: In numbers?

Hon. Mr. Steuart: About 6,000 altogether, of which I suppose a little over 3,000 would be adults. Ninety or 95 per cent are unemployed.

There is some seasonal work in fishing and trapping and they occasionally go out to sugar-beat fields in Alberta. However, the major source of income, unfortunately, is social welfare.

Senator Kinnear: You are allowing $10 million to control the effluent. By what percentage would that amount be effective? Would you also describe the industry in itself and how much effluent escapes in your attempt to control it?

Mr. Condon: In answer to your first question, this represents roughly $117 million, 10 per cent of the total equipment, building and engineering costs of the project.

In answer to your second question perhaps I could backtrack to say that obviously the pulp and paper and chemical industries have been major offenders with respect to air and water pollution in the past. Great strides have been made in the past few years technologically and also as a result of requirements of governments to meet higher regulations for purification of both water and air.

As an indication, this will be the third pulp mill we have built in Canada and we have increased the amount that we spend on pollution control several times. We have in each subsequent mill more than doubled. In fact more than triple the amount of effluent control expenditures will be made in this mill to meet the regulations of the Saskatchewan Water Commission and the new federal regulations. There is no question that effluent control is such an issue today in terms of improving the quality of life that it is here to stay. It will be improved every year, both from the point of view of technological advancement and the requirements of governments to improve.

Senator Kinnear: I understand that you have pollution trouble in Prince Albert. Are you overcoming that in the new plant?

Mr. Condon: We have had trouble in Prince Albert. In common with all pulp mills in North America, we are today installing a secondary treatment system in the Prince Albert mill which will immensely improve the pollution control. We have already in the past several months, in co-operation or agreement with the Government of Saskatchewan, installed aeration treatment. The secondary treatment installation will be completed by October of this year and will immensely improve the pollution control of the mill.

Pollution control in that sense is a function of dollars. The technology exists, but it is a question of the percentage of improvement one is willing to finance. We will certainly meet all the regulations of the Saskatchewan Water Commission and the federal regulations in this new mill.

Senator McElman: What steps are you taking in your St. Ann Nackawic plant, which also has an area of effluent problems?

Mr. Condon: Our chief engineer is with me and can address himself to this in greater detail than I. The St. Ann Nackawic plant has a separate water treatment system. It has a fairly advanced air treatment system. However, since the St. Ann mill was constructed there have been further technological improvements. Just to give you an example, the normal mill built five years ago would emit 22 pounds per ton of totally reduced sulphur. This mill will put out less than one and one-half pounds per ton, so that it will not be noticeable. In terms of air pollution control, tremendous advances have been made and I can almost say conclusively that there will be no air detection of pollution.

Hon. Mr. Steuart: The question was raised with regard to pollution at Prince Albert. Being the member from Prince Albert, I am a great expert. We produce lousy water and politicians. However, we have had a real problem with the North Saskatchewan River. When the mill was built we insisted on only a primary sewage disposal. At that time we had no other regulations in regard to the City of Prince Albert and the City of Saskatoon, which had no sewage disposal. They never had and they just dumped their raw sewage in the Saskatchewan River. We have changed that and they are both building primary sewage disposal systems. We have changed the allowable quality of the effluent from 40,000 pounds b.o.d. at the mill to 25,000 pounds, which our experts say the Saskatchewan River can handle. That is the stage which will take place this year. The next stage will be when we insist that the cities install secondary systems to ensure a b.o.d. content even below that.

We have our problems, but we are taking action. The mill is being very responsive in this regard. We are improving and setting much higher standards for the mill at Athabasca.

Senator McElman: I do not believe I yet have an answer to my question as to your current plans for the reduction of the air effluent at St. Ann Nackawic.

Mr. Tetro: We have here Mr. George E. Boyhan, the chief engineer of Athabasca, who will be responsible for

the construction of the proposed pulp mill complex at Dore Lake and is qualified to speak on the point raised by the senator.

Mr. George E. Boyhan, Chief Engineer, Athabasca Forest Industries Ltd.: At St. Ann Nackawic this technology on atmospheric emission control in our industry has only come to the fore in the last two or three years. In fact, there are today only three mills which would be considered to have very sophisticated equipment and they have come on stream in the last year. This technology is coming along all the time.

As Mr. Condon says, as far as emission rates are concerned, mills that are about five years old would have emissions of about 22 pounds a ton. This new mill at Athabasca will be down to a level of about 1½ pounds. With all these mills we have got, by the time the design is completed we will have a lead-time of about three or four years, so we were talking in 1967 and saying we could not incorporate all of the equipment that would have to go into the Athabasca mill. For example, for the destructive combustion of non-condensible gases there is highly sophisticated scrubbing equipment with 99 per cent efficiency precipitate. All of this would be incorporated in the Athabaska plant.

With regard to the St. Ann plant, we are looking at the problem. Hardwood poses a particularly difficult problem from the standpoint of emission, and particularly the smell from ethyl mercaptan and dimethyl sulphide. We know we have to put in additional scrubbers, and just how and what type to put in is currently under study. We know we have a problem with the hardwood, but it is currently under study, and we know we have to get that level down. That plant has only actually been in operation for about seven months at full operation, so we are scarcely even stabilized yet.

Senator McElman: But it is definitely in your planning procedures.

Mr. Boyhan: Very definitely.

Senator Denis: Who owns the Athabasca Forest Industries Ltd?

Hon. Mr. Steuart: It is owned 70 per cent by Parsons and Whittemore Inc. of New York, and 30 per cent by the government of Saskatchewan.

Senator Denis: I see this railroad is built around Beaver River. Is this river wide enough to have the wood float down it?

Hon. Mr. Steuart: We will truck the wood. We will not use the river for the delivery of wood.

Senator Denis: Is that impossible? Is it not wide enough?

Hon. Mr. Steuart: The most serious problem is the freezing over of the river.

Senator Denis: But during the summer it is not frozen.

Hon. Mr. Steuart: We enjoy a very brief summer in that part of Saskatchewan. We will truck the wood by road.

Senator Smith: It strikes me that the consumptive power of a mill of this size is a very large item. Where is that power generated?

Mr. Condon: The mill has its own power generation system. We will purchase some auxiliary power from the Saskatchewan Power Corporation, as we do in the Prince Albert Pulp Company, but the mill will have its own power plant.

Senator Smith: What is the source of power there at the mill?

Hon. Mr. Steuart: The crown-owned power corporation will supply the natural gas. The mill will generate most of its own power. The Saskatchewan Power Corporation will bring power to the townsite and supply standby power. We have two sources of power: the Gardiner Dam at Diefenbaker Lake, working in conjunction to do some of our power; and we have a hydro power plant at Nipawin. Most of our power is still from coal generation brought up from the south of the province from Estevan. These are basically the sources of our power.

Senator Smith: When you do get started, as I understand it you are quite serious in estimating that in future you could find a market in Europe to supplement the Japanese market and the market south of the border. When you have to fill that market in Europe, what will be your shipping route? Will you ship to the west coast and through the Panama Canal?

Mr. Condon: We have been discussing this with the C.P. Rail marketing people over the past several months for water export rates and the routes that would be employed. We could of course use Vancouver, but also Thunder Bay, obviously depending upon the whole rate structure.

Senator Smith: I was wondering whether you had reached the point where you had made a firm decision about the matter. This is a long haul in any case, and very expensive.

Mr. Condon: It is a very long haul, and obviously depends on the whole rate structure.

Senator Smith: It is very expensive, no doubt, whatever you do with it.

Senator Sparrow: Is it true that the present mill and the proposed mill in Saskatchewan produce the best bleached pulp in the world? If so, why is it?

Hon. Mr. Steuart: Next to New Brunswick! We produce a very high quality pulp. We have many serious problems of locating a pulp mill in Saskatchewan, such as the distance from the market which Senator Smith mentioned. One of the advantages is that our trees take so long to grow that they develop a very tough fibre and

produce a very high grade pulp, so we do have a very high grade of softwood pulp, and have been able in the Prince Albert pulp mill to obtain a ready market for it at a premium price. This basically is the reason, the type of wood that grows in the area.

Senator McGrand: When the pollutants are recovered from the air and water, how are they disposed of to make sure they will give no further problems?

Mr. Boyhan: Ultimately what we have to worry about is what we call the non-condensibles. What is condensible will be washed down in a scrubbing system as a liquid and re-cycled into our liquor recovery system. In the case of the non-condensibles, they will be destructively burned off in a lime kiln. We are very fortunate, because the lime kiln has basically lime as a scrubbing medium, which is used currently in probably the most advanced system of scrubbing sulphur dioxide in power plants. By destructively burning it off in our kilns we will in fact scrub out most of the SO_2, which would go to the atmosphere, and that too will come back into our liquor cycle. That is not so simple, because what happens is that obviously we are recovering so much sulphur that our sulphidity levels get too high for us, so instead of making up with salt cake—which the Saskatchewan people like to sell us, because they are the greatest suppliers of salt cake in the world—we have to supplant this with what we call caustic soda.

With regard to liquid effluent, we have periodic clean-ups of the sedimentation pools perhaps once or twice a year. We will tend to use this material for building up the dykes around the pools themselves, or use it to back-fill low depression areas, of which we have many in that muskeg country.

Senator McGrand: It does not get back into the soil?

Mr. Boyhan: No, it does not.

Senator Kinnear: Are you sure it does not?

Mr. Boyhan: It definitely does not. When we excavate this material we do it with a portable dredge. It comes out in a semi-liquid form, and we so set it up that the liquid drains right back into our sedimentation pool.

Senator Kinnear: Do any of the gases that there may be in the air kill the vegetation?

Mr. Boyhan: Not at the level we are talking about. Let me give you an idea in terms of concentration instead of talking in terms of pounds. The more recent mills will put out an emission level of about 600 to 800 parts per million. We will be down to levels of around one to 10 parts per million under normal careful operations. We normally figure from the point of emission to ground level a dilution of about 1,000 to one, so we are down to levels that may be parts per billion. It is true that the nature of the emission we have, which is hydrogen sulphide, and not ethyl mercaptan, is a type of gas which can be picked up very noticeably by smell, but at this dilution level it cannot be smelled any more. There will definitely be no disadvantage to the foliage in the area.

Senator Kinnear: I hope that is true. I come from an area where there are a great many chemical plants and there is a great deal of difficulty in dealing with this problem.

Mr. Steuart: We think we have done that. I wish you had been able to visit the plant in Halsey, Oregon, which I think is a classic example of what can be done in our industry, and is being done.

Senator McElman: Are there any freehold lands up in that area that are tributary to this?

Mr. Steuart: No, it is all crown lands.

Senator McElman: and there are no reservations that are tributary to this?

Mr. Steuart: No, not tributary to this area.

Senator McElman: Then as far as wood supply is concerned, for pulp, it is totally a crown land supply to the mill?

Mr. Steuart: Yes, totally crown land.

Senator Smith: Mr. Chairman, I was delayed a few minutes. I wonder whether our law clerk, Mr. Hopkins, has been asked for his opinion?

The Acting Chairman: Mr. Tetro will read a paragraph of the letter.

Mr. Tetro: Mr. Chairman, we have consulted with the Department of Transport and they have reviewed the provisions of the proposed bill that is before you. They have advised that there are no objections, as far as the Department of Transport is concerned, to the proposed bill. There is a letter on file addressed to the Director of Committees of the Senate, to this effect.

Senator Smith: Mr. Chairman, that was not exactly my question. My question is whether the bill is in the usual legal form for branch lines as in the case of similar legislation which we have been accustomed to considering.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I so certify.

Senator Smith: Thank you. I asked particularly, because somebody should make that statement.

The Acting Chairman: Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 6

THURSDAY, JUNE 17, 1971

Complete Proceedings on Bill S-14,

intituled:

"An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23698—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue
Blois
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Burchill
Connolly
(*Halifax-North*)
Denis
*Flynn
Fournier
(*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinley
Kinnear
Langlois
Macdonald
(*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Prowse
Rattenbury
Robichaud
Smith
Sparrow
Welch—(27).

**Ex officio member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 27th, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Benidickson, P.C., seconded by the Honourable Senator Paterson, for the second reading of the Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate.

23698—1½

Minutes of Proceedings

Thursday, June 17, 1971.

(6)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11:00 a.m. for the consideration of Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota".

Present: The Honourable Senators Haig, (*Chairman*), Argue, Blois, Burchill, Flynn, Kinnear, Langlois, McGrand, Prowse, Rattenbury, Robichaud and Smith.—(12).

Also present but not of the Committee: The Honourable Senator Benidickson.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Robichaud, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. John Reid, Member of Parliament for Kenora-Rainy River;

Mr. J. W. Ryan, Director, Legislation Section, Department of Justice;

Mr. M. Dolgin, U.S.A. Division, Department of External Affairs;

It was agreed to print as an Appendix to these Proceedings correspondence exchanged between the "International Bridge Committee" and the "State of Minnesota, Department of Highways" relating to Bill S-14.

After discussion and upon Motion it was *Resolved* to report the said Bill without amendment.

At 11:25 a.m. the Committee proceeded to the next Order of Business.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Thursday, June 17th, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota", has in obedience to the order of reference of April 27th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

Minutes of Proceedings

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, June 17, 1971.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-14, respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota, met this day at 11 a.m. to give consideration to the bill.

Senator J. Campbel Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have as witnesses today: Mr. John Reid, Member of Parliament for Kenora-Rainy River, the constituency of which Fort Frances is a part; Mr. J. W. Ryan, Director, Legislation Section, Department of Justice; and Mr. M. Dolgin, U.S.A. Division, Department of External Affairs.

Senator Benidickson sponsored this bill in the Senate. Do you wish to make a statement, Senator Benidickson?

Senator Benidickson: Mr. Chairman, when the bill was introduced I explained that this is a project of long standing. This bill proposes the construction of a bridge to supplement one that is very old, which was constructed by a private paper company, I think in 1903. Because the company has a mill on either side of the river, the bridge is also used for transporting its products to and fro by railway. With the increase in automobile traffic there are often great hold-ups.

Since the introduction of the bill several weeks ago, which was well advertised in the local press and in northwestern Ontario generally, I personally—and Mr. Reid will probably testify as to this too—have not received a letter from the company that owns the old bridge, or from anyone, protesting proceeding with this bill. Because it is an international river, this project requires authorization from the federal Parliament. Plans are not completed; a site has not been decided upon, but we are at least showing to the Americans that we approve of their going ahead with construction of the bridge. It will be a toll bridge. Almost all the funds will be raised in the United States; it will not cost our federal Government anything.

After we discuss the bill itself, I shall ask the indulgence of the committee to speak for a few minutes on a federal policy we have under which, if there is a toll bridge, we require the bridge authority to pay for the accommodation that we require for our own customs and immigration purposes. As it is a non-profit, private venture, I regard this as rather silly.

We had the same sort of discussion in the Standing Senate Committee on Banking, Trade and Commerce on December 18 in connection with a bill that Senator Kinnear presented, an amendment to the Buffalo and Fort Erie Public Bridge Company Act. When I raised this point before that committee, it was indicated that they agreed with my protest and that they thought copies of the minutes of that meeting should be sent to the Department of Manpower and Immigration and to the Customs authorities, to indicate our sentiment that it was rather ridiculous.

In connection with this bridge, on that point, for perhaps a year and a half the State of Minnesota, which is going to be responsible for the financing of this bridge, I say rather naturally balked on this one point. They said, "Heck, we are putting up the bridge, but we don't see any reason why we should have to pay the cost of the space that will be required on the Canadian side of the bridge for the customs and immigration officers." It almost killed the project, and it may kill other such projects if this federal policy continues.

Since I introduced the bill in the house, as I say, I have had no letters of protest from the company or from individuals. However, there has been in existence for several years an International Bridge Committee, representing citizens and the municipalities of International Falls, Minnesota, on the American side, and Fort Frances, Ontario, on our side. This committee has struggled for some time with this matter. My file goes way back before Mr. Reid succeeded me as Member of Parliament. There have been legal difficulties, which Mr. Ryan will explain, in connection with the amending bill that is before us, but this committee still functions.

I did not have time to distribute copies, but just yesterday I received from the Chairman, Canadian Section, a letter saying:

> Referring to our recent correspondence, enclosed is a letter from the Minnesota Highways Department confirming that Governor Wendell Anderson has signed thir bridge legislation into law.
>
> Canada has on several occasions been accused of "dragging its feet", and it is hoped our federal enabling legislation can now go through without further delay.

Perhaps I should file this letter.

Attached to that letter was a letter from the Department of Highways, the State of Minnesota, dated June 9, 1971. It is addressed to Mr. Tibbetts, the Chairman of the Canadian Section of the International Bridge Committee and reads as follows:

Dear Mr. Tibbetts:

On June 3, 1971, Governor Anderson signed Chapter 678, which permits creation of a joint international authority to construct and operate bridges over the waters between this State and Canada.

We hope that your Government will take action soon on its companion legislation and that our Congress will do likewise.

The Chairman: Does Senator Benidickson have authority to file these letters?

Hon. Senators: Agreed.

Senator Smith: Mr. Chairman, will they form an appendix to today's proceedings?

The Chairman: That is correct.

(*For text of letters, see Appendix p. 6:11*)

Mr. Reid, do you wish to make a statement?

Mr. John M. Reid, M.P.: No, Mr. Chairman, but I would be delighted to answer any questions that the honourable senators may wish to put in the course of their discussion on the bill.

The Chairman: Thank you.

Mr. Ryan, do you wish to make a statement?

Mr. J. W. Ryan, Director, Legislation Section, Department of Justice: No, Mr. Chairman, I have no comments to make, but I too will be available for any questions.

Senator Benidickson: I am not a member of this committee, Mr. Chairman, but could I ask Mr. Ryan to explain to the committee what will happen to the ownership of the bridge under the terms of the bill after the capital cost has been paid? Has that been part of your legal negotiations with Washington?

Mr. Ryan: Well, there is a long story in connection with reversion of international bridges that have heretofore been built, Mr. Chairman. This bill avoids that difficulty. I will try to explain what the original difficulty was.

These companies were usually set up under authority of American and Canadian reciprocal legislation. They tended to be joint stock companies or ordinary capital companies. They raised funds by way of bond issues to construct a bridge and then levied tolls to repay the capital cost, and at the end of the period the bridge reverted, half to the United States side and half to the Canadian side, and there was nobody to operate the bridge thereafter. This occurred most recently in the case of the Blue Water Bridge. It re-vested in the Canadian and American authorities, and there was nobody very anxious to carry it on, so we had to come to Parliament to establish a bridge authority which would be able to operate and maintain the bridge, and levy tolls.

This bill that you have before you avoids that difficulty by setting up an international bridge authority at the very outset. This is a joint authority, but if the American legislative bodies and authorities do not wish to be party to this international authority it becomes a purely Canadian authority which controls only that half of the bridge which is within Canadian jurisdiction. However, if the reciprocal legislation and authority in the United States permits American participation it then becomes a fully joint authority operated for the benefit of both sides.

The Chairman: After the costs have been paid?

Mr. Ryan: No, even before the costs have been paid. However, if there is no participation at the outset they can assign the Canadian rights to the American party who constructed the bridge and then, of course, there is the authority available in Canada, after the construction costs are paid off, to receive the bridge back. So the difficulty that we had with the Blue Water bridge is avoided by this bill.

Senator Rattenbury: Mr. Chairman, does the International Joint Commission enter into the picture?

Mr. Ryan: It has not entered into the picture at all, Mr. Chairman.

Senator Rattenbury: Is there any forecast of the cost of the bridge and the revenue?

Mr. Reid: Yes, I believe I can read you some information on that. It depends on the site chosen for the bridge. There are three sites which are now being discussed. If it is in the west end of Fort Frances it will cost approximately $4.4 million in United States funds. If it is in the east end of Fort Frances it will cost $U.S. 4.7 million. If it is in the downtown central site the cost will then be $U.S. 8.6 million.

Senator Benidickson: Because a lot of expropriation of existing buildings would be required.

Mr. Reid: To pay off the cost on the west end site, tolls would run at approximately 50 cents per car; in the east end site 55 cents per car; and in the central downtown site 85 cents per car—these figures being, of course, in U.S. funds. They are also based on a 30-year bond issue at 6½ per cent in 1971 U.S. dollars.

Senator Rattenbury: Tax free bonds?

Mr. Reid: Yes, tax free bonds.

Senator Rattenbury: I notice you did not give me the anticipated usage of the bridge.

Mr. Reid: I can give you the traffic figures for 1970.

Senator Benidickson: I put those on *Hansard* in April.

Mr. Reid: I will just repeat them. In 1970 the bridge was used by 1,046,547 persons, which includes 77,262 pedestrians. It was used by 320,845 cars, 6,576 trucks and 946 busses. The total rate of increase over the last ten years has been 50 per cent, which works out at an increase of approximately 5 to 6 per cent per year.

Senator Rattenbury: Have you a projected payout?

Mr. Reid: The payout has been projected on the basis of the tolls on a per car basis. At the present time there

are a number of ways in which you can pay your way over the bridge. About 40 per cent of the traffic would be classified as non-local traffic—that is those people who do not come from within the municipalities of Fort Frances and International Falls. Those non-local travellers pay $1 per car at the present time, while locals are allowed to buy books of tickets which reduce the cost to about 25 cents per car. For pedestrians there is no charge.

Senator Burchill: It is a private effort, is it not?

Mr. Reid: Yes. At the present time it is owned by a subsidiary of the Boise Cascade Corporation.

Senator Burchill: There is no objection to it, is there?

Mr. Reid: No. I have a letter here which I can put on record, if you wish, from the Boise Cascade Corporation giving permission and also a copy of a brief which they submitted to the Fort Frances-International Falls Bridge Commission, indicating their approval of the principle of the bridge, but taking issue with the downtown site which has been suggested.

Senator Rattenbury: I am sorry, would you repeat that last statement?

Mr. Reid: The brief took issue with the proposed downtown site. The reason they are opposed to it is that they recently built a $45 million kraft mill at Fort Frances, and the proposed downtown site would have the bridge structure going over their kraft mill and making an S-turn to an area which would be cleared of existing buildings and houses.

Senator Rattenbury: And this legislation is wide open on that?

Mr. Reid: It has nothing to do with the site.

Senator Kinnear: How long are the approaches on the east end and the west end of the bridge?

Mr. Reid: This would depend on the site. The approaches will be fairly narrow if the downtown site is chosen. They will be more elaborate at the east end and even more elaborate at the west end.

Senator Kinnear: How long do you think the bridge approach would be?

Mr. Reid: I do not have that information. So much depends upon the type of construction, and this cannot be decided upon until the authority is given by this legislation to make the technical arrangements. The Province of Ontario, however, has offered to contribute up to 90 per cent of the costs incurred by the town of Fort Frances for the construction of the proposed approaches. They have also offered to pay 50 per cent of the cost incurred by the town in acquiring properties by way of expropriation for the bridge site, and they have left open-ended the cost of reconstructing major arteries of the town of Fort Frances, if it becomes necessary, depending on where the bridge is located.

Senator Rattenbury: I understand from Senator Benidickson that provision will be made for entry on to the Trans-Canada Highway?

Senator Benidickson: No.

Senator Rattenbury: Did I misunderstand?

Mr. Reid: There will be entry on to Highway 71, which connects 120 miles north, with the Trans-Canada Highway.

Senator Blois: I understand that the tolls are being quoted in U.S. funds. If the United States dollar changes, one might have to pay 85 cents or 87 cents or something like that. It could cause tremendous confusion?

Mr. Reid: At the present time tolls are collected by the bridge company and the fees are posted. They vary from time to time when there are significant changes in the Canadian dollar.

Senator Blois: Is there no way of having the same fee at each side? When Canadians are using a bridge which is half Canadian there are complaints when they have to pay 2 or 3 cents more than Americans, as in the case of a bridge that was opened some years ago.

Mr. Reid: We already have this situation in the area at the Rainy River Bridge, where fares are collected solely in American money and one must pay the exchange rate. In International Falls at present the fares are collected in both Canadian and U.S. currencies.

Senator Prowse: But at Windsor, you can pay in either currency.

Mr. Reid: Yes, at Fort Frances as well.

Senator McGrand: On which side of the river is the larger population?

Mr. Reid: I think that at the present time it would be in Fort Frances, on the Canadian side.

The Chairman: Are there any further questions? Is there a motion to report the bill without amendment?

Senator Benidickson: On the point that I indicated, I do not know whether it would be possible to get approval of the committee on this existing policy in Canada of asking a non-profit authority to pay for the cost of the offices of Canadian immigration and customs.

Senator Prowse: It is not in this bill, is it?

Senator Benidickson: It is not referred to in the bill.

Senator Prowse: Then let us leave it.

The Chairman: I think, Senator Benidickson, that we should pass this bill without amendment, and then you can draw the attention of senators to that matter later.

Senator Rattenbury: As a matter of interest, may I ask Senator Benidickson what is the usual practice in respect of fees now. For example, if a charter flight arrives at an international airport from overseas, and

the customs officer has to be called out after hours, is there a fee charged?

Senator Benidickson: There is a fee charged.

The Chairman: Are there any further questions? Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: We will now discuss the second item on the agenda, the Trans-Alaska pipeline and tanker project. Before Senator Langlois, Senator Hastings and Senator Argue came in, I suggested that we not take this under consideration, but those three senators have asked that this matter be now considered. Who will speak to it first?

Senator Argue: Mr. Chairman, you will understand that I did not want this motion here in the first place. The Senate had before it a motion to deal with this. While it was my baby in the Senate, in a sense it is not my baby here. Although it is nearly dead now, I would hate to see it buried here today, or buried in this committee at all.

In my opinion there is only one thing we can do, and that is to proceed to deal with the motion as quickly as we can. After all, we are close to adjourning, and if we decide that we cannot deal with the motion before the adjournment, that will mean it will be put over until September. According to my understanding of the issues, and what I have read in the newspapers, the whole question may already be decided by September 1. This matter was placed before the Senate on April 1, and it seems to me that we have already taken far too long in dealing with it and not coming to a conclusion.

The House of Commons Committee on Environmental Pollution, which is chaired by Mr. David Anderson, has had some very important and learned witnesses before it and has heard a great deal of evidence dealing with this very question. My understanding is that that committee at this very moment is *in camera* considering its report. Of course, I have no idea what that report will be, but it occurs to me that we should set up a steering committee as quickly as possible to decide on witnesses that could be called before our committee, and as our first witness I would suggest Mr. Anderson, M.P.

I understand the Senate will be sitting on Monday and I think we should meet at the earliest possible date. As I have already said, we should call David Anderson as our first witness, because he heads the Commons committee and knows the subject well. He could give us some very good advice. I hope the committee will hear whatever witnesses it wishes to hear as quickly as possible, and deal with the motion before adjournment.

Senator Langlois: Mr. Chairman, I understand the Minister of External Affairs is interested in appearing before this committee. Unfortunately, I have been unable to reach him so far this morning, to arrange a time. When I do get in touch with him, it would be convenient if I could specify a time.

Senator Prowse: I would move that when we adjourn we do so until Tuesday morning at ten o'clock. In the interim we can arrange to have our witnesses.

Senator Rattenbury. Mr. Chairman, owing to previous commitments I shall not be able to be here next week. I should like to place on record, therefore, the fact that I did oppose Senator Argue's motion in the Senate, but perhaps I did not make the basis of my opposition clear at that time. I should like to take the opportunity now to make it clear.

I oppose his motion on the basis that I oppose any restraint on the use of the high seas for international trade. I do not think this committee, or any other committee of the Senate, should place itself in the position of trying to put restrictions on international trade, and that is what would really be involved here since it concerns the use of the high seas.

Senator Smith: Before we adjourn, Mr. Chairman, perhaps we should set up the steering committee in accordance with Senator Argue's suggestion.

Senator Langlois: For the information of the members of this committee, Mr. Chairman, I should tell them that this afternoon I intend to move that when the Senate adjourns today it do stand adjourned until Monday evening at eight o'clock. I have every reason to believe that that motion will be agreed to. Bearing that in mind, perhaps we can set our schedule of work accordingly.

The Chairman: I would suggest that Senator Langlois, Senator Prowse and Senator Argue form a sub-committee of this committee to arrange the details of the meeting of the committee, which will be at ten o'clock on Tuesday. That sub-committee can see to the details concerning the appearance of witnesses and so on. Is that agreed?

Hon. Senators: Agreed.

Senator Prowse: Then I move that we adjourn until Tuesday morning at ten o'clock, Mr. Chairman.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: The committee is now adjourned until ten o'clock Tuesday morning.

The committee adjourned.

APPENDIX

International Bridge Committee
International Falls, Minnesota
Fort Frances, Ontario
P.O. Box 129,
Fort Frances, Ont.

June 11, 1971

Senator the Hon. W. M. Benidickson
The Senate
Ottawa, Ontario

Dear Bill:

Referring to our recent correspondence, enclosed is a letter from the Minnesota Highways Department confirming that Governor Wendell Anderson has signed their bridge legislation into law.

Canada has on several occasions been accused of "dragging its feet", and it is hoped our federal enabling legislation can now go through without further delay. While a trip to Ottawa is no particular treat for me, if necessary, I would appear before the Senate Committee and answer any questions they might have.

Yours sincerely,

H. A. L. Tibbetts,
Chairman, Canadian Section.

HALT/smn
c.c: J. L. Forster, D.H.O.
cc mailed June 15, 1971 to:
Mr. John Reid, M.P.
Mr. A. E. Ritchie

International Bridge Committee
International Falls, Minnesota
Fort Frances, Ontario
P.O. Box 129,
Fort Frances, Ont.

June 11, 1971

Mr. T. S. Thompson
Staff Assistant
Minnesota Highways Dept.
St. Paul, Minnesota 55101
U.S.A.

Dear Mr. Thompson:

SP 3616 (TH 53-315)
Fort-Falls Bridge Authority

Thank you for your letter of 9th June advising that Governor Anderson has signed your enabling legislation.

I am advising Senator Benidickson of Minnesota's action, and I am confident the Fort-Falls Bridge Authority Act will shortly receive its third and final reading in Ottawa.

I enjoyed our recent meeting and also the luncheon on Wednesday with your Duluth officials. In my opinion, most of our problems have been resolved and the only hold-up is our respective Federal legislation.

Yours truly,

H. A. L. Tibbetts,
Chairman, Canadian Section.

HALT/smn
c.c: Sen. W. M. Benidickson

State of Minnesota
Department of Highways
St. Paul, Minn. 55101

June 9, 1971

Mr. H. A. L. Tibbetts
Chairman—Canadian Section
International Bridge Committee
Fort Frances, Ontario

Re: S.P. 3616 (T.H. 53-315)
Fort-Falls Bridge

Dear Mr. Tibbetts:

On June 3, 1971, Governor Anderson signed Chapter 678, which permits creation of a joint international authority to construct and operate bridges over the waters between this State and Canada.
We hope that your Government will take action soon on its companion legislation and that our Congress will do likewise.

Sincerely,

T. S. Thompson
Staff Assistant

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 7

THURSDAY, JUNE 17, 1971

and

TUESDAY, JUNE 22, 1971

First and Second Proceedings on

Subject-matter of a motion respecting

Trans-Alaska pipeline and tanker project

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23700—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue
Blois
Bourget
Burchill
Connolly (*Halifax North*)
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinnear
Langlois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Prowse
Rattenbury
Robichaud
Smith
Sparrow
Welch—(26)

(Quorum 7)

**Ex officio member*

Orders of Reference

Extract: From the Minutes of Proceedings of the Senate, April 1st, 1971:

Pursuant to Order, the Honourable Senator Argue moved, seconded by the Honourable Senator Macdonald (*Cape Breton*): That this House opposes the Trans-Alaska pipeline and tanker projects and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas.

After debate,
The Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Choquette, that further debate on the motion be adjourned until the next sitting of the Senate.

The question being put on the motion, it was—
Resolved in the affirmative.

Subject: **Referring** the subject-matter of a motion to the Standing Senate Committee on Transport and Communications for consideration.

Extract: From the Minutes of Proceedings of the Senate of Canada, June 2nd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion, in amendment of the Honourable Senator Langlois, seconded by the Honourable Senator Smith, to the motion of the Honourable Senator Argue, seconded by the Honourable Senator Macdonald (*Cape Breton*):

That this House opposes the Trans-Alaska pipeline and tanker project and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas; that the motion be not now adopted, but that the subject-matter thereof be referred to the Standing Senate Committee on Transport and Commmunications for consideration.

After debate, and—
The question being put on the motion, in amendment—

The Senate divided and the names being called they were taken down as follows:—

YEAS

The Honourable Senators

Boucher,
Bourget,
Bourque,
Carter,
Casgrain,
Connolly
(*Ottawa West*),
Cook,
Denis,
Desruisseaux,
Duggan,
Eudes,
Fergusson,
Fournier
(*de Lanaudière*),
Inman,
Isnor,
Kinnear,
Lafond,
Laird,
Lamontagne,
Langlois,
Lefrançois,
Martin,
McDonald,
McElman,
McNamara,
Robichaud,
Smith—27.

NAYS

The Honourable Senators

Argue,
Beaubien,
Bélisle,
Blois,
Davey,
Flynn,
Grosart,
Haig,
Lang,
Macdonald,
Méthot,
Molson,
O'Leary,
Quart,
Walker,
White—16.

So it was resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

23700—1½

Minutes of Proceedings

Thursday, June 17, 1971.
(7a)

Pursuant to notice the Standing Senate Committee on Transport and Communications proceeded at 11:25 to the consideration of the subject-matter of a motion respecting Trans-Alaska pipeline and tanker project.

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Flynn, Kinnear, Langlois, McGrand, Prowse, Rattenbury, Robichaud and Smith. (12)

Also present but not of the Committee: The Honourable Senator Benidickson.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On motion, it was Resolved to print 800 copies in English and 300 copies in French of these Proceedings.

After discussion, it was agreed that a Steering Committee composed of the Honourable Senators Langlois, Argue and Prowse would meet to decide who would be invited to appear as witnesses.

At 11:45 a.m. the Committee adjourned to Tuesday, June 22nd, 1971, at 10:00 a.m.

Tuesday, June 22nd, 1971
(7b)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10:25 a.m., for the consideration of the subject-matter of a motion respecting Trans-Alaska pipeline and tanker project.

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Isnor, Langlois and MacDonald. (7)

Present but not of the Committee: The Honourable Senator McDonald.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Blois, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. David Anderson, Member of Parliament for Esquimalt-Saanich, B.C.,

Captain J. B. Cook, Chairman, British Columbia Coast Pilots of Vancouver.

It was agreed that the Steering Committee composed of the Honourable Senators Langlois, Argue and Prowse should meet to study the evidence given by the witnesses on this day, as well as the report of the "Special Committee on Environmental Pollution" of the House of Commons and report to the Main Committee on Thursday, June 24th, 1971, at 9:30 a.m. Furthermore, it was *Resolved* that the report of the Steering Committee be sent to members of the Standing Senate Committee on Transport and Communications.

At 11:20 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Reports of the Committee

Monday, June 28, 1971

The Senate Standing Committee on Transport and Communications has, in obedience to the Order of Reference of June 2nd, 1971, considered the Subject matter of a motion respecting Trans-Alaska pipeline and tanker projects and reports as follows:

Your Committee recommends:

That the Senate oppose the Trans-Alaska pipeline and tanker project and urge the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas.

Respectfully submitted,

J. Campbell Haig,
Chairman.

Minutes of Proceedings

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, June 17, 1971

The Standing Senate Committee on Transport and Communications, to which was referred the subject-matter of a motion respecting the Trans-Alaska pipeline and tanker project, met this day at 11.25 a.m.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We will now discuss Item (*b*) on the notice, the Trans-Alaska pipeline and tanker project. Before Senator Langlois, Senator Hastings and Senator Argue came in I had suggested that we not take this under consideration, but those three gentlemen have asked that this matter be now considered. Who will speak to it first?

Senator Argue: Gentlemen, you will understand that I did not want this motion here in the first place. The Senate had before it a motion to deal with this. So while it is my baby in the Senate, in a sense it is not my baby here, and although it is nearly dead now I would hate to see it buried here today, or buried in this committee at all.

In my opinion there is only one thing we can do and that is to proceed to deal with the motion as quickly as we can. After all, we are close to adjourning and if we were to decide that we could not deal with the motion before the adjournment date, then that would mean it would go on into September, and according to my understanding of the issues and what I have read in the newspapers the whole question may already be decided by September 1. This matter was placed before the Senate on April 1, and it seems to me that we have already taken far too long in dealing with it and still not bringing it to a conclusion.

The House of Commons Committee on Environmental Pollution, which is chaired by Mr. David Anderson, has had some very important and learned witnesses before it, and has heard a great deal of evidence dealing with this very question. My understanding is that that committee at this very moment is *in camera* considering its report. Of course, I have no idea what that report will be, but it occurs to me that we should set up a steering committee as quickly as possible to decide on witnesses who could be called before our committee. As our first witness I would suggest Mr. David Anderson, M.P. He has headed the Commons committee. He knows the subject well. He could give us some very good advice. I hope the committee will hear whatever witnesses it wishes to hear as quickly as possible, and will deal with the motion before adjournment.

Senator Langlois: Mr. Chairman, I understand the Minister of External Affairs is interested in appearing before this committee. Unfortunately, so far this morning I have been unable to reach him to arrange a time. When I do get in touch with him, it would be convenient if I could specify a time for him.

Senator Prowse: I would move that when we adjourn we do so until Tuesday morning at ten o'clock. In the interim we can arrange to have our witnesses.

Senator Rattenbury: Mr. Chairman, owing to previous commitments I shall not be able to be here next week . I should like to place on record, therefore, the fact that I did oppose Senator Argue's motion in the Senate chamber on a basis which perhaps I did not make clear at that time. I should like to take the opportunity to make it clear now. I oppose his motion on the basis that I oppose any restraint on the use of the high seas for international trade. I do not think this committee or any other committee of the Senate should place itself in the position of trying to put restrictions on international trade, and that is what would really be involved here, since it concerns the use of the high seas.

Senator Smith: Before we adjourn, Mr. Chairman, perhaps we should set up the steering committee in accordance with Senator Argue's suggestion.

Senator Langlois: For the information of the members of this committee, Mr. Chairman, I should tell them that this afternoon I intend to move that when the Senate adjourns today it do stand adjourned until Monday evening at eight o'clock. I have every reason to believe that that motion will be carried. Bearing that in mind, perhaps we can set our schedule of work accordingly.

The Chairman: I would suggest that Senator Langlois, Senator Prowse and Senator Argue form a sub-committee of this committee to arrange the details of the meeting of the committee, which will be at ten o'clock on Tuesday. That sub-committee can see to the details concerning the appearance of witnesses and so on. Is that agreed?

Hon. Senators: Agreed.

Senator Prowse: Then I move that we adjourn until Tuesday morning at ten o'clock, Mr. Chairman.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The committee adjourned.

Ottawa, Tuesday, June 22, 1971

The Standing Senate Committee on Transport and Communications, to which was referred the subject-matter of a motion respecting the Trans-Alaska pipeline and tanker project, met this day at 10.25 a.m.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Gentlemen, we now have a quorum to proceed with the motion referred to this committee on June 2:

> That this House opposes the Trans-Alaska pipeline and tanker project and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas;

Then it was proposed in amendment:

> that the motion be not now adopted, but that the subject-matter thereof be referred to the Standing Senate Committee on Transport and Communications for consideration.

Honourable senators, we have as our witness this morning Mr. David Anderson, the federal Member of Parliament for Esquimalt-Saanich, British Columbia, who is chairman of the House of Commons committee on environmental pollution. That committee's report was tabled in the house yesterday afternoon.

Mr. Anderson has made an extensive study of this subject and is here to discuss the matter with us. He also has a map on the board.

Mr. David Anderson, M.P.: Thank you very much, Mr. Chairman. Honourable senators, may I thank you for inviting me here. It certainly is an honour and pleasure for me. Of course, the subject is very important and I feel flattered that you are calling me as your first witness.

About three months ago the committee which I chaired in the house started looking into this matter of the tanker route between Alaska and Washington state and the problems it would pose to the Canadian coast. It is a subject that I have been looking into for about a year and a half, but only about three months ago, with the announcement of the construction of a $150 million refinery at Cherry Point, people began to realize that this tanker route, which the American oil companies were proposing, was very much in the offing.

The American Government itself must approve the construction of a pipeline in Alaska. If this approval is not given, there will be no tanker route. In other words, the transportation system is an 800-mile pipeline in Alaska, followed by a 1200-mile shipping route between southern Alaska and the American mainland, what are called now the "lower 48" states. The U.S. government has not yet given that approval. They are still considering the matter.

It was at this stage that I got involved, by a trip I made to Washington to testify before the U.S. Department of the Interior hearings on the ecological impact, in other words, the damage to the environment, that their transportation proposals would entail.

Senator Isnor: Did you go representing any particular group?

Mr. Anderson: No, sir. I went on my own, as a result of a press release that the Department of the Interior sent out, asking those interested in making presentations to apply. I applied, and they were kind enough to include me in the group of American senators and Congressmen who had testimony to give on this route. I did not represent the Canadian Government. I did not represent either of the Houses of Parliament. I was simply there as a private Canadian citizen. They were kind enough, as I said, to give me of their time and to have my testimony recorded.

In actual fact, at those hearings, I was the first person to mention this particular problem—that is, the problem that the tankers would pose. The Americans had concentrated on the pipeline problems in Alaska. They had almost completely ignored the problems that would occur if the pipeline were built and ships started moving the oil between the southern end of the pipeline and Washington state.

The objection I had at that time was that no studies had been done. How could we analyze, how could we tell how dangerous the route was, if no studies had been done? How could we tell what should be done to minimize the risk, if they had done no preparatory work in looking at these waters?

After this testimony, I returned to Canada. My committee began looking at this problem, and we called a number of witnesses before us. With your permission, I will quickly go over them. We had three ships' captains or tugboat captains, and two of these were also pilots. We had two oceanographers, one from the University of Washington, down in Seattle, and the other from the University of British Columbia, in Vancouver. We had a lawyer from Washington, D.C., commenting on the defence and economic aspects. We had Dr. Passmore, of the Wildlife Federation. We had a Canadian Wildlife Service man. We had two professors of zoology, one from Washington and one from the University of Alberta. In other words, there was quite a good range of fourteen witnesses from different specialties, including—and I would like to emphasize this—the practical people who actually have to handle ships in those waters, the pilots who are responsible for the safety of navigation. We considered their testimony most carefully. I would be delighted to furnish to interested members of this committee the relevant committee minutes of my house committee, copies of which I have here.

The first conclusion was that a spill is inevitable. Although everything can and must be done to minimize a spill, if they set up this route, there is no way a spill can be avoided. The reasons for this, of course, are strictly mathematical. Until there is no human error, until there are no equipment faults, accidents will occur. Accidents will occur in this area and in particular in the area that starts with Cape Flattery here at the very northwest of the continental U.S.A.

The conclusion of the committee was unanimous and it was based on the fact that when you are here you get into confined waters. The distance from here to the boundary, if I may refer to the map—and this line marks the boundary between the United States and Canada—is ten miles on either side. Once you knock off the amount that you must stay away from the shore, once you knock off the centre dividing line, you have relatively narrow lanes on each side of this dividing line in which the ships will have to travel.

In regard to the modern tanker, we had a naval architect before us who discussed this. The modern tanker is not a

manoeuverable vessel; it is underpowered; it is extraordinarily large, with thremendous momentum or inertia. For example, the largest tankers of the second world war were approximately one-tenth the size of these tankers which the oil companies are planning for this route. What they will do thereafter, I do not know. They may have even larger tankers in mind. The largest tankers of the second world war were just lighters, what one might describe as tenders, compared to these enormous tankers of today. These modern tankers are not very manoeuverable: they cannot stop quickly; they have a tremendous amount of sheer when they turn. You have to anticipate this. In other words, they are a difficult vessel to manage.

In this area there is a fair amount of bad weather. At Cape Flattery, for example, visibility is badly restricted by fog for 16 per cent of the time in the month of August. At Race Rocks, close to Victoria on the Canadian side, the foghorn was once blown continually for 29 days.

Once shipping reaches that point it is in the pilotage area. The pilots are picked up in Canada at Race Rocks, or at Ediz Hook on the American side. There are two choices. They can proceed this way via route "A", through Rosario Strait, or via route "B", through Haro Strait and Boundary Pass.

My point is that here, at its narrowest, the strait is one and one-half miles wide. Because of their draught, the enormous supertankers cannot be near the shore; they must be out from the shore on both sides. Therefore, instead of a corridor one and one-half miles wide, it is only perhaps one mile. In other words, route "A" is through very confined waters in Rosario Strait. On the chart I have circled in red the dangers which would put a tanker on the rocks.

Senator Isnor: Are these American-owned tankers?

Mr. Anderson: Yes, and they would probably be the best equipped and best manned tankers. However, we must remember the pilot error and human error of all types to which ships are prone. It is not only the tanker, of course; we must bear in mind the ship that hits the tanker. A ship may be perfect, with the best possible crew, and an accident may happen to it because a rust bucket with perhaps a not fully qualified crew will hit it.

Last year we had a case, which is known certainly to one of you very well, in which a Soviet freighter collided with a B.C. government ferry. It was not a case of bad seamanship; I think they were properly trained crews on both boats. It was an accident involving human error, which occurred under favourable conditions. It was in Active Pass, which is not one of the two I have indicated here. However, it does illustrate the fact that even good ships with good crews get into difficulties.

Therefore, we must consider these confined waters, the frequent fog and, in particular, tides and currents. The tides at the strongest run approximately five to seven knots, which is substantial, especially when a ship attempts to manœuvre. When a ship attempts to manœuvre in a tideway it becomes that much more difficult.

Senator Burchill: At what port is it planned to deliver the oil?

Mr. Anderson: There is now a refinery at Cherry Point, approximately 12 miles south of the Canadian line. The Atlantic Richfield Company owns that $150 million refinery. Nearby, owned by another company, is a large tract of land. There is a possibility, regarding which no one will give us information, of a pipeline from here, across the United States to Chicago, which is a major American market for oil.

We simply have not received information on the amount of oil that will go into that area. At present some people say that as there is only one refinery there, what is the concern? It is a $150 million refinery processing 100,000 barrels of oil per day, which perhaps doubles the amount moving in that area, but it is still not a great deal. I wonder whether it is the thin end of the wedge. I am convinced that it is. This will not involve one ship every third day, but at least two ships each day. These are guesses. I am very critical in my report of the fact that even the Canadian Government civil servants sent to Washington as a result of an agreement between Mr. Sharp, our Minister of External Affairs and Mr. Rogers, their Secretary of State, were unable to obtain accurate figures of the amount of oil being moved. They complained of that on their return. This is one of the great areas of uncertainty, for which I apologize. All I can say is that it appears that this information is being concealed.

This Cherry Point refinery, however, is the destination of the oil at present. By the way, that refinery is now served by Alberta oil transported across the Trans-Mountain Pipeline, branching off near Vancouver and serving down there. That market for Canadian oil would be lost. That is another effect, but not one which my committee on the environment took into account.

There are extensive currents, bad weather, very confined waters and, as you gentlemen well know, some of the most attractive parts of Canada contained in the shorelines of the gulf islands of British Columbia and Vancouver Island. Victoria and my riding comprise a retirement area because it is still attractive and offers the type of life the retired wish to lead. I apologize for emphasizing this, coming from the area. It is not industrial and many easterners have made a deliberate choice to retire there because of that. There are not that many types of attractive island landscapes in Canada which enjoy a good year-round climate.

This is quite unique and, at present, undamaged. The tourist and fishery industries are important, not only to us, but to the Americans. Sport fishing, of course, cannot be valued in dollars. The amount of enjoyment people obtain from being able to retire and fish two or three times a week cannot be calculated in dollars and cents. This will be in jeopardy when the route is established because of the tremendous amount of oil and the currents. The clean-up work done in Chedabucto Bay was minimal compared to what would have to be done in this area if a major tanker got into difficulty. The difficulties faced at Chedabucto Bay—and I do not wish to downgrade that effort—would be minimal compared to the enormous amounts of oil that would be transported and, the terrific currents in this area.

The proposal is that an industrial canal be established in what is basically a lovely recreational area. There is no

offsetting advantage to Canadians, either here or elsewhere. There are no jobs to be provided Canadians. There is nothing whatsoever in this for us except probably the loss of our Alberta oil market in the Pacific northwest. It appears to us that under those circumstances the environmental considerations become paramount. We have nothing to gain; we have a great deal to lose; and, therefore, the conclusion of my committee was that it should be opposed with all the power the federal Government can bring to bear in this particular battle. I must say here that we are not opposing the American Government; we are not opposing the American people. There are many in the United States who feel exactly the way we do. The Lummi Indian tribe has set up an aquaculture development on Lummi Island. They have a large investment. They employ as many people in their own $4 million co-operative as the Atlantic Richfield people employ at their Cherry Point refinery, and it would be wiped out by an oil spill.

There have been oil spills. There was an oil spill of 55 hundred barrels of diesel fuel only six weeks ago at Anacortes. Three or four months ago, two ships collided in San Francisco Bay. They were using the same radio frequency and were owned by the same company. Therefore, everything should be in their favour to avoid a collision with one another. However, accidents will occur. We can minimize the risk, but we cannot eliminate it. If there is an oil spill in this area it will do tremendous damage on both sides of the border. The Americans are split as to whether or not to approve this route. I do not think we should in any way think this is an anti-American point of view that our committee has come up with. Senator Muskie is opposed to this and he, as you well know, is the front-running Democratic contender for the nomination for the Presidency next year. Representative Les Aspin of Wisconsin, another Democrat, is also opposed to this. A resolution opposing the Alaska pipeline was signed by 47 senators and congressmen, including, Senator Kennedy as well as Senator Muskie. President Nixon has stated he is waiting until his environmental advisers tell him what is the right approach before going ahead.

I have here a quotation from Rogers Morton, the United States Secretary of the Interior, who is the man ultimately responsible for deciding on the environmental effect. The headline reads: "Morton not in favour of oil pipeline". It is from the Seattle *Post Intelligencer* of June 11. Morton denied this the next day, but the story stands. In other words, what I am saying is that there was enough doubt about what he said that an honest reporter came to the conclusion that Morton was opposed.

I would again like to emphasize that this is not an anti-American approach. There are Americans who favour this, and there are Americans who oppose it. I think that we, from our point of view, deciding on the merits, can only oppose it, because I can see no good in it for us, and I think it must result in damage to Canada.

I am afraid this is a very disjointed presentation, but I will be delighted to answer any questions honourable senators may have.

Senator Argue: When your committee made its report, did anyone on the committee oppose the report, or was it a unanimous one?

Mr. Anderson: No, senator, the committee was unanimous in its conclusions. A quorum was present, although every member of the committee was not present. I am answering for the committee members who were present, and it was a unanimous report. No party took the position that they were not in favour, and our unanimous report was that the Canadian Government should vigorously oppose this proposal because oil spills are inevitable and damage to Canadians is also inevitable.

Senator Argue: What alternative do you see if this is not followed? How might the oil be moved?

Mr. Anderson: Well, that is an excellent question. There are alternative routes. A railway study is now under way by an American corporation. I forget the name of the American corporation doing the study, but it is a multi-million dollar study. The Mackenzie valley route is a possibility. I do not suggest we should accept the Mackenzie valley route because we have not yet done adequate studies on that, but it is a possibility. If there is a delay, these alternative routes can be looked at intelligently.

I would like to quote Rogers Morton, the United States Secretary of the Interior, and this is a direct quote from the Seattle *Post Intelligencer*:

> I think it is an awful lot of money to spend for 30 or 40 million barrels of oil.

I emphasize that there is not a great deal of oil in Alaska. It is not something which must be brought out because there is an enormous pool there. The Alaskan pool is not as valuable in terms of the total amount of oil as are the Athabaska tar sands. We have ten times as much oil in that particular area. Perhaps instead of spending $5 billion on a pipeline, we should be spending $1 billion on a crash research program with respect to the Athabaska tar sands. Perhaps we should be doing the same for the Colorado oil shale deposits. There are so many unanswered questions in this area that a delay of a year or two, in order to investigate to see whether we really do need to transport Alaskan oil now, would perhaps be in everybody's interest. It would not be in the interests of those who have oil leases. They have spent a great deal of money. There was a great euphora three years ago, and many oil company presidents went to Alaska to bid for leases, and now they are beginning to realize that they were perhaps a little ahead of the game. Money has been spent stockpiling pipe in Alaska. These are bad company decisions and I do not honestly feel—I am no socialist in this respect—that the Government should bail these companies out to save them from their bad decisions. For example, I do not think the British Government was wrong when it did not bail out Rolls Royce when it ran into difficulties as a result of managerial mistakes. I think the President of the United States is right in not bailing out the Lockheed Aircraft Company whose problems stem directly from managerial mistakes. Just because they spent such enormous amounts of money, I do not think that the Government should bail them out.

Senator Argue: Of all the possible routes, Mr. Anderson, would you say that this is absolutely the worst one?

Mr. Anderson: Again, it would depend on the research that has not yet been done on the Mackenzie valley route. I

would strongly suspect it is not the best. I would say the worst of all may be the route with the tankers going through the Northwest Passage to Prudhoe Bay. That may be the worst, but I certainly do not think this is the best route.

Senator Langlois: Well, in this regard I have here this morning Captain Barry Cook of Vancouver, who is the Chairman of the British Columbia Coast Pilots, and it would be very interesting for this committee to have Captain Cook and his staff tell us about the navigational hazards in the two proposals. He is in this room now, and he would be available whenever the committee wished to hear him.

The Chairman: I think we should hear from Captain Cook now.

Senator Argue: I think we should have all the questions the senators wish to pose to Mr. Anderson first.

Senator Langlois: I do not want to interrupt this witness at all.

Senator Macdonald: How would you meet the argument which has been advanced that on the east coast they already use these large tankers? Why not also use them on the west coast?

Mr. Anderson: That is an excellent question. The first point is that the routes on the east coast are established. I am an environmentalist, but I do not think you should cut off businesses and shipping routes simply because they set up their equipment before we set up our regulations. I think you have to give them an opportunity to make the regulations more slowly so that you can phase in, in terms of, for example, better equipment and better ships.

I will quickly add though that when you are establishing what is basically a new route, although there is a route established there now, many times as much oil will be transported, and when you are doing that you should go for the best you can. In other words, you should go for what you hope you will have on the east coast five to ten years from now, or even 15—I do not know.

On the east coast communities are formed around harbours and there is the tradition that the oil will move. The Irving interests gave very interesting testimony to this effect before my committee last fall. You cannot simply say, "Right, now we are going to set up rules which are "a lot tougher." But before an industry is established and before these patterns are established, I feel you have the right to go for the very highest degree of safety. Also I think before a route is established you should certainly search for alternatives which may be better. I have difficulty in answering Senator Argue's question, but I believe there may be alternatives not yet looked at that are better.

Senator Macdonald: Would it not also be an argument that there are not the same navigational dangers on the east coast as there are on the west?

Mr. Anderson: From Mr. Cove of Vancouver and Captains Dighton and Davenport of Victoria, I gathered that our problems, particularly in these confined waters, make Chedabucto Bay look a little easier. It is a straighter approach; it does not have the doglegs; itdoes not have this right-hand bend. Of course, you will have an expert witness who will follow me. It appears to be a better and easier type of navigational approach.

Senator Argue: Mr. Anderson is not a member of the Government, but is close to Government and is associated with it. I wonder if he would care to say what attitude the Government itself is taking. I would like to refer particularly to a report in this morning's *Globe and Mail* on a speech by the Environment Minister, Jack Davis, prepared for delivery to a joint meeting of the Canadian Botanical Association and the American Institute of Biological Science:

> In it, the minister strongly opposed large oil tankers travelling through the Strait of Juan de Fuca and the Strait of Georgia to deliver oil from Alaska to refineries on Puget Sound.
>
> Large tankers, he said, should not be allowed to use these special waters. They should instead be restricted to the high seas . . .
>
> "Why bring the tankers in past Victoria when scenic values and the recreational potential of this tight little wonderland could be destroyed . . . in a matter of hours?"

We know the theory of Cabinet solidarity, and it seems to me the Government is clearly on record with this statement of the minister, but I wonder, Mr. Anderson, if you would say what you feel to be the position of the Government, as stated in the House of Commons and to your committee, and so on.

Mr. Anderson: I think that is probably the strongest statement Mr. Davis has made. I believe that represents his position very accurately. I would give the palm to Mr. Sharp for having looked at this problem first and most carefully. He is certainly opposed, in the things that he has said, to this tanker route. He has gone down to the States and was there on the 10th of this month to discuss this matter with Rogers Morton, the Secretary of the Interior, and also with Rogers, the Secretary of State. He is opposed to it because there is simply no value to us in this route. He is doing what he can.

I think the Government has rather slowly come around to the point of looking at this problem, but now that it has done so it very definitely opposes this route, certainly if, as you say, we can have faith in some Cabinet solidarity and in the statements of Davis and Sharp, which I think we surely can.

I should add just one thing. I was in Washington last week for three days at a conference sponsored by the Coast Guard, the oil industry itself and the environmental Protection Agency. It was a first-class conference. When the Americans do a thing like that, they do it well. Despite all the gadgetry available, it became perfectly clear that you can pick up oil in relatively small quantities from the water, be it a river or pond or where there are few waves or, in other words, where conditions are favourable. Obviously, prevention is the best thing. We look to prevention, and we had our witnesses discuss navigational aids, one-lane systems, and all sorts of things, but we still came to the conclusion there would be spills. Once you come to

that conclusion then, of course, as there is no benefit for us, you come to the conclusion that we should oppose this tanker route.

Senator Burchill: Did Mr. Sharp report to Parliament on the success of his mission?

Mr. Anderson: He made a report, yes, and I would say that it was more guarded than a positive statement of success. In other words, the Americans are willing to discuss this with us. However, Morton, the Secretary of the Interior, stated that in his view he is only concerned with the pipeline aspect, and if he approves the pipeline I think it will simply be a question of the Canadian and U.S. Coast Guards and our respective Departments of Transport discussing ways to minimize the problem, rather than whether or not this route should be established. I have the feeling that if the Americans who oppose this route lose their battle, we are inevitably faced with it.

Then the Americans will probably tell us, "We can bring our ships in through here, or in American waters, but if we do so there are likely to be more spills than if we use all the water without separation—in other words, if we make use of this water as if there were no border." So they would give us the choice, "Look, we could use route 'A' and we could keep our ships south of this line, but if we do that there will be more spills." The currents generally in this area are northwards, according to the two oceanographers we heard, so you are faced with the problem that if you do not collaborate with them, the chances of spills are likely to be higher. We will be forced to collaborate with them and use our waters for these tankers as though they were American, and the spills will probably be of such magnitude that it will be irrelevant where they occur. If I may illustrate on the map, the spills will cover that area if the tides or winds are that way, or this area if the tides and winds are the other way. So we will be forced to collaborate with them regardless. It is a rather unpleasant prospect, but I am afraid that to avoid problems we would have to.

Senator Langlois: Going back to these exchanges between Ottawa and Washington, is it not a fact that recently a joint commission or joint board was formed between the two countries to exchange views on pollution hazards from tankers?

Mr. Anderson: Yes, but only for the Great Lakes.

Senator Langlois: It is limited to the Great Lakes?

Mr. Anderson: Yes. I asked in the House whether this would be extended, and it was agreed it would be a good idea to extend it, but we have not yet got to that point.

Senator Langlois: Is this board or commission functioning?

Mr. Anderson: I understand it is, but whether or not it has actually got people going, I do not know. There is one problem, that the Americans might not be able to get the personnel without a special Congressional decision. The Administration has accepted it, but the Congress has not.

Senator Langlois: Is this a division or branch of the International Joint Commission?

Mr. Anderson: Yes, it is, but as yet the Americans have not started and funded it because it may need Congressional approval to do that.

Senator Macdonald: Do you know if any oil companies have entered into contracts to have these huge tankers built?

Mr. Anderson: I have not firm information on that. I believe they have given the contracts, but I do not believe that keels have been laid. We had excellent testimony from Derek Cove, the marine architect in Vancouver, about compartmentalization, double skins and so on, and if we and the Americans insisted, such features could be worked into the structure of these ships. They have not yet passed the point of no return.

I might add that last Wednesday Senator Magnusson introduced in the United States Senate a bill suggesting very tight regulations for the construction of American ships. Copies of the bill are not yet in Ottawa, but the Information Services of the U.S. Embassy will provide a copy to me as soon as it is available. Senator Magnusson is the chairman of the subcommittee of the Senate, and I understand that the chances of this getting to the floor of the Senate are extremely good. It will be a very tight bill as far as regulations governing construction are concerned. We would certainly like to see it.

Senator Blois: Can the Canadian Government take any definite action, except in conjunction with the government of the United States?

Mr. Anderson: None at all; we are entirely in their hands. There is no legal way we can stop this if the Americans wish to go ahead, none at all; we are entirely in their hands. There is no legal way that we can stop this if the Americans wish to go ahead.

Senator Blois: If it is agreed that it is international waters, can the United States take care of it, then?

Mr. Anderson: No, sir. If it were international waters, we have no more rights than anyone else. We could just point out the fact that we think they are a threat to us. They could use their own waters, this side of the boundary line.

Senator Blois: That would not interfere with international regulations?

Mr. Anderson: No it would not, to the best of my knowledge, although I wonder how they are getting around Turn Point.

Senator Blois: That is what is in my mind, how they could do it.

Mr. Anderson: I do not know. Perhaps they would have to use route "B" entirely. I think that in order to use route "A" they must come into our waters.

Senator Langlois: This is a very technical question. Do you know whether or not, under American law, the passage would be considered as an international voyage or a domestic voyage?

Mr. Anderson: I understand, and I may be wrong, it is more a guess than a statement of fact, that it would be

domestic waters if they are travelling between these points.

Senator Langlois: So they could pull the ships out, at that rate, if they wanted to?

Mr. Anderson: Yes.

The Chairman: Are there any further questions? Thank you, Mr. Anderson.

Honourable senators, we propose to hear now Captain Cook.

Senator Langlois: Mr. Chairman, before you hear Captain Cook, I would like to mention that he comes here quite unprepared this morning. He happens to be in Ottawa in connection with some other business. It was only when I sat in my office that it came to my mind that he should be invited to appear before this committee.

The Chairman: Captain Cook is chairman of the British Columbia Coast Pilots, from Vancouver.

Captain J. B. Cook, Chairman, British Columbia Coast Pilots, Vancouver: Mr. Chairman and honourable senators, first of all, I would like to say that Mr. Anderson has given you, in my opinion, quite a complete and very accurate picture of the situation we are faced with in the Puget Sound area. I think practically everything he said is quite true.

There is possibly one thing that we should deal with and that you gentlemen are probably not familiar with, the Oregon Treaty that established the international boundary between British Columbia and the coast of Washington. It guarantees the rights of shipping to Canadian and American ports. The Oregon Treaty is under question these days, as to whether the Americans are going to comply with it or not. We ran into this problem in connection with Roberts Bank.

I agree with Mr. Anderson that it is clear that the Americans are going to have to use, possibly, Haro Straits because you can see quite clearly that they can go to Cherry Point on two courses, with a much wider channel than if they went through the Rosario Straits in this area. Naturally, with a big ship of 200,000 tons, arriving at Cherry Point on a flush tide, they would have to come up here and turn around and go back.

Possibly the Oregon Treaty will have to be renegotiated at some time, because the Royal Commission on Pilotage states that 90 per cent of the shipping bound for Canadian ports crosses the Black line, it crosses from the Canadian side to the American side and back again.

This is the problem we are running into now near Roberts Bank, where there is a Canadian port. You can see that this is the apex of the border and Canadian vessels, or foreign-going ships with pilot, have to cross the apex to go to this port. They are telling us now that we are violating American territorial waters by crossing that apex into Roberts Bank. This is one of the problems we are faced with.

Mr. Anderson spoke about the larger, 100,000 and 200,000 ton ships. These ships are approximately 1,000 to 1,200 feet long. If you just stop the engines, they will carry on for ten or twelve miles before stopping. You can see what would happen in these areas here, if you had an engine failure. The ship would have to go ashore, because there is no way in which you can steer it to stop it. Of course, the same situation has developed over here. If you had an engine failure, the ship would just have to go ashore.

We have had a number of what I suppose should be considered as major accidents in the last six or seven years. Puget Sound pilots had a collision down here. Another one went ashore here, off Smith Island. A Japanese ship and a Danish ship had a collision. There was a collision between here and Active Pass, between a Russian ship and a ferry. A ship hit the point here not very long ago. There were quite a number of collisions. So, in my opinion, it would have to be expected that there would be accidents.

Senator Isnor: Those would be very much smaller ships?

Captain Cook: This is true. They are much smaller ships than the ones involved here.

Senator Isnor: Is it absolutely necessary for them to have the very large type of tanker that Mr. Anderson mentions?

Captain Cook: This is for economy purposes. That is about the only thing you can say for it. I do not think it matters how you construct a tanker, or how much money you spend on it, if the ship is going to go ashore it is going to spill. I do not know of a ship you could build which would not be subject to this type of accident. Even if it has double bottoms, even if it has double hull plating and everything else, if it does have a collision it is going to have a bad spill. You cannot stop a ship like this.

Senator Isnor: We were faced with the same situation on the east coast, in exploring for oil on Sable Island when the Shell people were coming into Halifax harbour. It is easier to navigate there than it is on the west coast, I would judge from what Mr. Anderson has had to say. Halifax harbour is easier to enter.

Captain Cook: I am not an expert in navigation on the east coast. I imagine they have their dangers and that they are probably equal to ours. The conditions are different, but in the long run they probably run an equal risk.

I might also add that they say they are going to put in all these modern navigational aids that will assist the ships; but we must remember that the two Standard Oil tankers that collided at San Fransisco Bay bridge a short time ago were operating under Coast Guard radar control, and that did not seem to be a deterrent. They did not have pilots on board. Under American laws, such as the one they are proposing here, they were operating on certificates, but did not have to carry pilots. I am not saying that it was because they did not have pilots on board that the collision occurred. They were probably very competent people who were commanding both those ships, but it did prove that the technical aids that were available to the ships were insufficient to prevent a collision.

Senator Langlois: Captain Cook, you have made reference to a collision between a ferry and a Russian ship when they were going through Active Pass. You also made reference to the size of the ships involved in this collision. How does Active Pass compare to any of the passes that these proposed routes would go through? Is it not a fact

that Active Pass is a much narrower pass than any that could be travelled on any of these alternative routes?

Captain Cook: This is quite so; Active Pass, as you can see, has two very sharp turns, which does not apply here. There is, of course, a much narrower route. We have discussed this with the Puget Sound pilots on an informal basis. Those pilots with whom I have spoken certainly prefer to use Haro Strait. In fact, they do not have any intention of using Rosario Strait unless legislation makes it necessary. I agree with them; in their position I would also use Haro Strait. It is very easy to see that arriving at this point en route to Cherry Point an easy wide swing will bring the ship to the berth. This is preferable to going to Alden Bank or somewhere up here, where a wide turn would be involved. In view of the foggy periods experienced at this time of year, the pilots prefer the wider channel.

There has been discussion with the American pilots of a proposal to route the loaded tankers in through Haro Strait and the empty tankers out through Rosario Strait so as to avoid their meeting.

Senator Langlois: What is the width of the channel where the collision took place?

Captain Cook: It is approximately two cables, or a little less.

Senator Langlois: Will the American tankers be subject to compulsory pilotage?

Captain Cook: No, not under present legislation. American ships can travel between American ports without pilots. It is similar to a Canadian cruise ship travelling to Alaska from Canada; they do not take pilots. These ships would not require pilots.

The Chairman: Do you wish to make a further statement, Captain Cook?

Captain Cook: Naturally, we do not oppose marine traffic in general. It is part of our occupation, but as long as ships navigate there will be accidents; we will never prevent them. So long as there is human error coupled with mechanical error there will continue to be accidents. There is no doubt about it. It would be very nice to be able to say we could prevent them.

The Chairman: Does that apply to vessels with or without pilots?

Captain Cook: With or without pilots, yes, sir. I would like to think there would be fewer accidents with pilots.

The Chairman: What is the committee's wish in regard to this motion?

Senator Argue: While I am not familiar with the usual procedure, it seems that we could make a brief statement that we have heard evidence which leads us to a certain conclusion. Recommendations to the Senate could be included.

The Chairman: Senator Argue, we were to discuss this; the motion was for further consideration. We have had as witnesses Mr. Anderson and Captain Cook. What is your wish and pleasure?

Senator Argue: With regard to further witnesses?

The Chairman: Right.

Senator Argue: I would be happy to have more. I agreed to have one called, and he has appeared.

Senator Langlois: In this connection, Mr. Chairman, I informed the committee recently that Mr. Sharp has expressed the wish to appear before the committee in this respect. However, I have been unable to ascertain from him a date that would be convenient. On the other hand, another witness has been suggested to me, one Mr. Humphrys, of the Department of Energy, Mines and Resources. I am told he is one of their advisers and an expert in this matter. I am not insisting that he be called; it is just a suggestion.

The Chairman: Is it the wish of the committee that we adjourn to the call of the Chair, and that Senator Langlois and Senator Argue will try to arrange for further witnesses? Shall we adjourn this meeting until Thursday at 10 o'clock?

Senator Argue: Yes—I might add, with a little flexibility. If the chairman does not feel that is the best date, he should have the authority to set it at the most appropriate time. We should meet as early as possible, hear whatever other witnesses we have, and then deal with the motion.

Senator Burchill: I think we have had enough evidence to convince us that as far as Canadians are concerned this is not the wisest route. We also have evidence that the Government is doing all it can, apparently to prevent it. Discussions have taken place with United States officials in an attempt to point out to them that it is a dangerous proceeding. We can only support those efforts. What is the reason for the adjournment?

The Chairman: Senator Langlois has indicated that Mr. Humphrys of the Department of Energy, Mines and Resources might appear.

Senator Langlois: It was merely a suggestion.

The Chairman: I am in the hands of the committee.

Senator Blois: What further evidence is necessary?

The Chairman: Another factor is the fact that the House of Commons committee has presented its report opposing the suggestion of this route.

Senator Burchill: I do not know what more we can do than support what has already been done.

Senator Blois: I do not know either.

Senator Argue: I suggest that the steering committee consider my motion, and perhaps modify it to some extent, in the light of the evidence and the action of the Government. The steering committee would report to this committee its consideration as to the terms of the motion we might pass in this committee, and then let the committee itself deal with it. We are a little up in the air now. We either deal with the motion in the words in which it now stands, or we do not deal with it. Someone should do something about it. I do feel that the proposition in the motion has been fully

supported here, and that we should take action in that regard.

The Chairman: Is it the wish of the committee, then, to refer this matter to the steering committee for further consideration of the wording of the motion?

Senator Blois: Mr. Chairman, certainly not the words "in very close contact with the House of Commons". It seems to me that it should be a joint committee. Perhaps we should work a little more closely with the other place.

The Chairman: Well, Mr. Anderson has presented his report.

Senator Blois: I know he has, but are we going to follow that definitely? That is the point I wish to raise.

Senator Langlois: I suggest that the committee study the bulk of the report of the House of Commons committee, and then the wording can be redrafted. It would be in the hands of the committee after that, and I suggest that we adjourn to the call of the Chair. The steering committee will be reporting to you, and you will then be able to call a meeting of the main committee, as you see fit.

Senator Burchill: Once you arrive at satisfactory wording, it will take a short time for us to consider it.

The Chairman: Is that agreeable?

Senator Argue: I think Senator Macdonald is on the steering committee, so it is a fairly representative committee.

The Chairman: Is that agreeable?

Hon. Senators: Agreed.

The Chairman: The meeting is now adjourned to the call of the Chair.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 8

WEDNESDAY, JUNE 23, 1971

Complete Proceedings on Bill C-246,

intituled:

"An Act respecting pilotage"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

24141—1

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue	Macdonald
Blois	(*Cape Breton*)
Bourget	*Martin
Burchill	McElman
Connolly	McGrand
(*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier	O'Leary
(*Madawaska-*	Petten
Restigouche)	Prowse
Haig	Rattenbury
Hayden	Robichaud
Isnor	Smith
Kinnear	Sparrow
Langlois	Welch—(26)

**Ex officio member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23rd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Giguère, for the second reading of the Bill C-246, intituled: "An Act respecting pilotage".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, June 23rd, 1971.
(8)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 2:05 p.m. for the consideration of Bill C-246, intituled: "An Act respecting pilotage".

Present: The Honourable Senators Haig (*Chairman*), Argue, Burchill, Kinnear, Langlois, Martin, McElman, McGrand and Smith—(9).

Present but not of the Committee: The Honourable Senators McDonald and Lang.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

Upon motion of the Honourable Senator Langlois, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport;

Mr. Raynold Langlois, Counsel, National Association of Canadian Marine Pilots;

At 2:35 p.m. the Committee adjourned.

At 2:50 p.m. the meeting resumed and Mr. Langlois continued with his evidence.

The following witnesses were heard:

Mr. Alain Lortie, representing the Federation of St. Lawrence River Pilots;

Captain P. R. Hurcomb, General Manager, Dominion Marine Association;

Mr. Jean Brisset, Q.C., representing "The Shipping Federation of Canada" and "The Canadian Chamber of Shipping".

In attendance:

Captain A. D. Latter, Superintendent of Pilotage, Department of Transport.

Mr. A. Taylor, Chairman, Pilotage Task Force, Department of Transport.

After discussion and upon motion, it was *Resolved* to report the said Bill without amendment.

At 3:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee

Report of the Committee

Wednesday, June 23, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-246, intituled: "An Act respecting pilotage", has in obedience to the order of reference of June 23rd, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman

Minutes of Proceedings

Report of the Committee

The Standing Senate Committee on Transport and Communications

Evidence

Wednesday, June 23, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-246, respecting pilotage, met this day at 2 p.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum and I call the meeting to order. We have before us Bill C-246, an act respecting pilotage. We have as witnesses this afternoon Mr. R. R. Macgillivray, Director, Marine Regulation Branch, Department of Transport, Captain A. D. Latter, Superintendent of Pilotage, Department of Transport, and Mr. A. Taylor.

To be heard from later are Mr. Raynold Langlois and Mr. Alain Lortie, both of the National Association of Canadian Marine Pilots. Further, I understand that Caption P. R. Hurcomb, as General Manager, would like to speak on behalf of the Dominion Marine Association.

I would now ask Mr. Macgillivray to proceed.

Mr. R. R. Macgillivray, Director, Marine Regulation Branch, Department of Transport: Thank you, Mr. Chairman. Honourable senators, I do not think it would be profitable for me to occupy very much of your time explaining the bill after the explanation that was given in the chamber yesterday. Briefly, it has been pointed out that pilotage in Canada was falling into a state of rather bad disorganization some nine years ago, and a royal commission was appointed to look into the matter. Although that royal commission has not concluded its work, it has presented its general report and is following it with detailed reports on various areas. The general report covered Canada as a whole. The detailed reports have covered the Pacific coast, the Atlantic coast and the St. Lawrence River area. There is one detailed report still to come which will be covering the Great Lakes area. In view of this, we felt that there was enough in what the commission had reported on already to allow us to proceed with drafting the legislation.

The bill was considered at some length in the committee of the other place and a number of amendments were made, as will appear from the bill before you.

Briefly, the bill provides for the establishment of four pilotage regions. They are: the Atlantic region, which covers the four Atlantic provinces plus a small portion of the province of Quebec on the north shore of the Bay of Chaleurs; the Laurentian region, which covers the St. Lawrence River and Gulf from that point upstream to Montreal, to St. Lambert lock; the central region, which covers the waters of the St. Lawrence River above Montreal and all the waters of the Great Lakes and the connecting waters; and the Pacific region, which covers the Canadian waters of the province of British Columbia.

These authorities have the objects of establishing, operating and administering an efficient and economic pilotage service in the interests of safety. They will be proprietory corporations under Schedule D of the Financial Administration Act, and excepting that in the central region there is provision that the Governor in Council may direct that the pilotage authority will be a subsidiary corporation of the St. Lawrence Seaway Authority, they will have all the appropriate powers to own lands, buildings, boats, et cetera, necessary to run a pilotage service. They will consist of at least three but not more than seven members.

The principal new feature of pilotage, as introduced in this bill, is that we do away with the system that now exists of compulsory pilotage payments and substitute for it compulsory pilotage. The compulsory payment system persists in most of the pilotage districts in Canada. This is a provision whereby a ship, although it does not have to take a pilot, must pay pilotage dues. There is a long history of that which I will not go into. However, the general effect is that ships that are subject to compulsory payment do take pilots.

In place of that we are proposing that the regional authorities will be able to designate waters as compulsory pilotage areas, and, if they should fail to do so, this may be done by the Governor in Council.

In these areas every ship, unless it is exempted, will have to be under either the conduct of a licensed pilot of that pilotage authority or the conduct of an officer of that ship who holds a pilotage certificate demonstrating that he has the appropriate local knowledge in order to handle his ship in those waters.

Up until now, in the few areas where we have had compulsory pilotage, the ships that have been exempted from taking a pilot have been exempted on the basis of their flag and their trade. That is to say, in the narrow waters of the Great Lakes—in other words, in the St. Lawrence River above St. Regis at the international boundary, in the Detroit and St. Clair rivers, the St. Marys River and Canal and the Welland Canal—in those areas pilotage is compulsory and salt-water ships coming in must take pilots, but the Canadian and U.S. Great Lakes ships are exempt from this requirement on the

basis of their nationality and the trade they are engaged in—that is, the trade within the Great Lakes and as far down the St. Lawrence river as Seven Islands.

Instead of exempting ships on the basis of flag and trade, under this bill they will be exempt only if the officers of the ship have demonstrated, by acquiring a pilotage certificate, that they have local knowledge of these waters. This is a point that has been objected to by the Dominion Marine Association representing the owners of those ships. But we do feel that it is more logical to exempt them on the basis of the qualifications of the persons on the bridge rather than on the basis of the flag and trade the vessel is in.

The existing pilot licence issued under the Shipping Act will continue in force, and new pilot licences will be issued by the pilotage authority to those applicants as they come along, under the regulations. Until now, in most pilotage districts pilots have been in the category of private entrepreneurs; that is to say, they are not employees of the pilotage authority. Under the present legislation the pilotage authority exercises certain control over pilots. It licenses them and has some control over the manner in which they attend to their duties. It arranges to despatch them to ships on a tour de rôle basis. It operates pilot boats, collects the money owing to them and disburses it to them. In addition, it has the regulation-making power to establish pilotage dues by by-law approved by the Governor in Council. But, as I say, except in a few areas in parts of the Great Lakes, the pilots are not employed by the pilotage authority; they are controlled, but not employed.

Under the new arrangement, a pilotage authority will have the power either to engage the pilots as employees of the authority and then despatch them to ships, or to enter into a contract with a corporation representing these pilots for the provision of pilotage services and for the training of apprentices, as appropriate, in any area where the majority of the pilots indicate that this is the system they would prefer.

There are provisions in the bill for the suspension or cancellation of pilot licences where they fail to meet qualifications, and we foresee a periodic review of the competence of pilots, firstly, of their medical fitness and, secondly, of their keeping up to date in the use of navigational equipment, etcteera. The same, of course, will apply to the holders of pilotage certificates.

Pilotage authorities have the regulation-making power, as I said earlier, to prescribe areas that will be compulsory pilotage areas, to prescribe classes of licences and certificates, examination procedures, and to limit the number of licences, and so on. These regulations are all subject to the approval of the Governor in Council.

In the case of those establishing compulsory pilotage rates and those prescribing qualifications for the holders of licences and certificates, prior notice must be published in the *Canada Gazette,* and if any objection is made, a hearing will be held. As a result of the hearing, the pilotage authority may be required to vary the regulation before it is approved by Order in Council. The hearing in the case of pilotage rates will be by the CTC.

While the pilotage authorities will establish the qualifications respecting local knowledge and skill, the Governor in Council will make the regulations establishing minimum qualifications respecting the navigational certificates they must hold, such as master or mate, and the sea-time they must have put in, the age and health of the applicant.

As regards the Great Lakes, at the present time, the pilotage system there is a joint pilotage system operated by the Department of Transport and the United States Coast Guard under a memorandum of arrangements entered into between the Minister of Transport and the Secretary of Transportation in the United States. The intention is that this will continue; that is to say, that there will continue to be a joint pilotage system, although there may be changes in the manner in which it is run. But the bill provides that such a system may be maintained.

I think, Mr. Chairman, that gives the general gist or outline of what is in the bill. There may be one or two points of detail I should refer to that have been brought up since the bill was considered in the committee of the other place. We have had an inquiry from the Shipping Federation of Canada, which is the organization representing the overseas owners—the owners of ships that come into Canada from outside—as well as from other Canadian owners.

The people who, for the most part, in Canada use the pilotage service have expressed praticular concern about a feature of the Great Lakes pilotage system that we now have, and that is that in the Great Lakes system, as I have mentioned, we have certain designated waters that are compulsory, the narrow waters of the adjoining rivers and canals. In the other waters of the Great Lakes pilotage is not compulsory, but every ship must have on board, not necessarily on the bridge or in charge of the watch, either a pilot—one of the licensed pilots I have mentioned—one of the ship's officers who has demonstrated certain minimum qualifications, and these are quite minimal. He has to demonstrate that he has a knowledge of the English language so that he may communicate with our coastal stations over the radio; that he has the qualification to operate the radio telephone; that he has knowledge of the "rules of the road" for the Great Lakes, which are the special navigational rules, the steering and sailing rules, etcetera, that apply in the Great Lakes and that are somewhat different from the international rules; and that he has been into those waters for a certain number of trips. The certificate that we give to those from these foreign ships is called a "B" Certificate. The Shipping Federation has expressed concern that, as a result of an amendment made in the committee of the other place, it might not be possible for us to issue these certificates. However, I am satisfied that under the provisions of clause 14(1)(k) it is possible for us to make regulations that will recognize that a ship may be operated in these open waters of the Lakes under certain restrictions, if it does not have a pilot or the holder of a pilotage certificate in charge of the watch. One of these conditions can be that they have among the members of the ship's complement a person such as I have described.

I hope that this will reassure the Shipping Federation of Canada.

In addition, since the bill was passed by the other place we have had discussions with representatives of both the National Association of Canadian Marine Pilots and the Federation of St. Lawrence River Pilots, which are the two organizations that between them represent, I should think, every pilot in Canada. We have had representations from them indicating their concern, in the first place, that a pilotage authority might, under pressure from other interested parties, fail to designate a particular stretch of water as a compulsory pilotage area, or might take what is an existing compulsory pilotage area and declare it to be no longer such. They are concerned this might happen in a case where it should not happen; that is, that such a decision might be made against the public interest.

The minister has indicated, and has authorized me to say, that he is satisfied that the Government would not allow any pilotage authority to bow to such pressure from shipowners or anyone else who might not want it to be declared compulsory, in making a decision that would not be in the public interest on what should or should not be a compulsory pilotage area.

Specifically, we recognize that the royal commission, in recommending, as it did, that certain areas be compulsory areas, did not go far enough. For instance, I do not think anyone would doubt that Chedabucto Bay should be a compulsory pilotage area, and the royal commission did not so recommend. Mind you, conditions have changed since they studied that. Similarly, they did not recommend that a certain portion of the St. Lawrence River below Quebec City should be a compulsory area, but, again, conditions have changed, and there is an oil refinery in Quebec City now, and there is going to be a substantial oil trade in there. These are the sort of places concerning which we can say we do not foresee the pilotage authority declaring not to be a compulsory pilotage area.

Another point that the pilots' organizations expressed concern on was that under the provisions of clause 14(1)(b) the pilotage authority, in prescribing the ships or classes of ships subject to compulsory pilotage, might furstrate the general intent of the bill by exempting ships or classes of ships that really should not be exempt. Again, the minister is prepared to declare that the Government just would not allow the intent of the bill to be frustrated in this way.

It should be made clear, though, that this would not prevent the granting of exemptions, for instance, to a ferry vessel trading between Puget Sound and Victoria, B.C. Such vessels now trade there regularly, day in and day out, and it is obvious that their officers know the waters and do not need to take a pilot.

Generally speaking, the minister would like to emphasize that this bill must be looked at in context with the recent Government legislation in the field of safety of navigation as a means of preventing pollution. The Arctic Waters Pollution Prevention Act and Bill C-2, which was passed on March 31 as chapter 27 of the Statutes of this session, are the two other pieces of legislation that must be coupled with this as Government legislation in the field of marine safety, and having as one of the principal objectives the prevention of pollution by preventing accidents.

I think that is all I wish to say, sir.

The Chairman: Thank you, Mr. Macgillivary. Captain Latter, would you care to say anything on this bill?

Captain W. D. Latter, Superintendent of Pilotage, Department of Transport: No, sir. I will answer any questions that may be asked of me.

The Chairman: Mr. A. Taylor?

Mr. A. Taylor, Chairman, Pilotage Task Force, Department of Transport: No, sir.

The Chairman: We will now hear from the National Association of Pilots, Mr. Raynold Langlois and Mr. Alain Lortie.

Mr. Raynold Langlois, Counsel, National Association of Canadian Marine Pilots: Mr. Chairman and honourable senators, I would like to point out that my colleague Mr. Alain Lortie represents the Federation of St. Lawrence River Pilots, but all the pilots across Canada speak with one voice. Probably we shall have two tones in a minute, but in substance it is one voice.

I must say that the pilots are greatly relieved by the last statement made by Mr. Macgillivray on behalf of the Minister of Transport. I might also take this opportunity, if I may, to confirm something that the Leader of the Government in the Senate said this morning, that he was intrumental in arranging a meeting between the Minister of Transport and Mr. Lortie and myself in order to discuss the Government policy on the bill and certain intentions we thought were not explicit in the bill. I am sure this statement made by Mr. Macgillivray, as a result of this meeting, will help to reassure those we represent.

The bill, as presented in its original form in the other place, had many failings, and we, as representatives of the pilots, made various suggestions to the committee about amendments that should be made, and many amendments were in fact made to the bill. However, we find that the bill as it presently stands still contains a major failing in that, although it is a pollution control instrument, although it is a bill that creates compulsory pilotage and therefore one should expect that the general rule would be that all ships plying in the dangerous waters of Canada that will be designated as compulsory pilotage areas will be subject in fact to compulsory pilotage, when one turns to the regulation-making clause, clause 14, which is probably the most important clause in the bill, one finds it weak in drafting. For instance, clause 14 (1)(b) reads:

> An Authority may, with the approval of the Governor in Council, make regulations necessary for the attainment of its objects, including, without restricting the generality of the foregoing, regulations
>
> (b) prescribing the ships or classes of ships that are subject to compulsory pilotage.

If I read the clause correctly, as drafted this could mean the vessels that will be subject to compulsory pilotage have to be named, have to be specified. The general rule, therefore, is that ships, unless they are specifically made to be subject to compulsory pilotage, will be exempt. It is like establishing a speed limit on a highway and then saying, "We will name the cars that have to respect it," instead of going the other way round and saying that ambulances and fire trucks will be exempt. Normally the exceptions are listed, not the general rule. In the opinion of the pilots, this clause could be construed by authorities as being an indication by the legislature to be as broad as possible in the exemptions.

When Mr. Macgillivray says that exemptions will be granted on the basis of the qualification of the person assuming the control of the vessel, he is referring, of course, to the issue of pilotage certificates in lieu of pilot licences. I reply that clause 14(1)(b) does not so stipulate; it does not speak of the qualifications of the person on the bridge. We are reverting in a much broader form, if I may say so, to the much criticized system of exemption under the old Canada Shipping Act, where ships were exempt on criteria of class or size and not on criteria of competence of the person actually navigating the vessel.

It is unfortunate that the bill is not drafted in order to say what type of situation would bring about an exemption. If we want to exempt ferry boats, warships, as is always done, hospital ships, Canadian fishing vessels, small Canadian registered vessels, why could we not have said it by using phraseology similar to that of section 346 of the Canada Shipping Act instead of using this broad language?

What also worries the pilots is that clause 14(1)(b) is very wide, but in the next paragraph, paragraph (c), there is another very wide power to waive compulsory pilotage. The bill does not say what is the difference between an exemption and a waiver. Some witnesses from the Department of Transport may explain that the waiver will be specifically for a vessel, will be granted in special circumstances and for a limited period of time. But what the pilots do not understand is, if this is the intent, that the waiver be granted in exceptional circumstances for specific vesels and for a limited period of time, why is this not specifically stated in paragraph (c) of clause 14(1)?

In our view, the other great failing of the bill concerns the status of the areas where, under the present legislation, there is compulsory payment of pilotage dues. What happens to these areas after enactment of this new legislation? In the other place we suggested that clause 15(4) be amended.

Senator Langlois: Mr. Chairman, if I might interrupt for a moment, I understand the minister is waiting to meet the pilots.

The Chairman: This meeting will adjourn for ten minutes while the pilots meet with the minister.

(A short recess)

The Chairman: Mr. Raynold Langlois, would you please continue?

Mr. Langlois: I would like to thank the members of the committee for having given us this recess in order that we might meet with the Minister of Transport. The meeting was very good. Before the recess I was about to complete my remarks. We pointed out that there was a failing in section 15(4) concerning the survival of the present licences and of the pilotage districts.

There were other points raised, but in the view of the assurances that we have now received from the minister, and the policy as expressed for the minister by Mr. Macgillivray, we recognize that this is badly needed legislation, and in view of the timetable of Parliament, it is important that the bill be adopted now, despite its imperfections, which can be corrected at a later date. Therefore the pilots will, under those conditions, support the bill as being good legislation.

The Chairman: Thank you. Has Mr. Lortie anything to say?

Mr. Alain Lortie, for the Federation of St. Lawrence River Pilots: I do not have much to say. I express my support for what Mr. Langlois has said. Again, on behalf of the federation I wish to thank you for allowing us the recess, and also the honourable Senator Martin for arranging the meeting.

Senator Martin: The members of the committee did that, not I.

Mr. Lortie: I want to say that we have appreciated the meeting with the minister, and also his frankness and directness. Our presence here this afternoon has been in the same spirit. We are not opposing this legislation. We want this to be made very clear. However, we think the bill, like any other piece of legislation, can be perfected, and it is in that spirit that we are making our remarks. We understand the timetable of the Government. We wish to express our support of the bill and also our intention of keeping a good eye on the legislation and of improving it, if at all possible, in the future. Thank you, gentlemen.

The Chairman: We will now hear from Captain Phillip Hurcomb of the Dominion Marine Association.

Captain Phillip Hurcomb, Dominion Marine Association: Thank you, Mr. Chairman. I will be very brief. My intention was simply to try to provide the committee with material which would indicate that the suggested amendments made by the pilots need not and should not be made. The situation has now changed. I take it that they are not pressing for the amendments they had mentioned, and that therefore there is no need for me to rebut them. Our end of the industry feels that this bill imposes a financial and other burdens on the industry. It is too bad, but that is the way it is. We will just have to live with it in some way. I will be very interested to know what assurances the Minister of Transport gave to our friends. He has given us no comfort or assurance of any kind.

Senator Martin: What kind of assurances do you want?

Captain Hurcomb: I hope that the assurances made to the pilots are not confirmed assurances. I am not sure

what they were, but I am of course, just joking. However, thank you for the privilege of allowing us to appear. We will try to make the legislation work.

The Chairman: We will now hear from Mr. Jean Brisset, Q.C., representing the Canadian Chamber of Shipping and the Shipping Federation of Canada.

Mr. Jean Brisset, Q.C., the Shipping Federation of Canada and the Canadian Chamber of Shipping: Mr. Chairman and honourable senators, as Mr. Macgillivray pointed out, the associations which I represent here comprise those that use the services of pilots, for the most part, in Canadian waters. Therefore they have a great interest in this legislation.

They supported the legislation as originally drafted and which came before the other place. They supported the legislation because it satisfied the two principal objectives on which all parties were in agreement, namely, decentralization of powers, as recommended by the Royal Commission on Pilotage, and flexibility at the regional level. Some of the amendments made in the other house have had the effect of reducing to some extent this flexibility, but we also are prepared to live with it.

However, we had great concern over one aspect of an amendment made in the other place, in relation to the requirements of pilotage on the open waters of the Great Lakes.

Mr. Macgillivray has explained that the Great Lakes were divided into two kinds of waters, waters called "designated waters," where pilotage is compulsory, and the open waters of the Great Lakes. When the Great Lakes pilotage was adopted in 1961, the Canadian Government did not consider that pilotage should be made compulsory.

I remember appearing before the committee 10 years ago when Brigadier Booth, who was then the assistant Deputy minister, explained his negotiations with the American Government, at which time he was able to induce the American Government to accept that Canada could issue to officers of foreign ships what is called a "B" Certificate, that entitled them to dispense with pilots on the open waters of the Great Lakes if the officer concerned had certain minimum qualifications. The United States Government did not want to issue those certificates, but accepted the fact that Canada could issue them, and they would recognize them. The certificates were issued to officers of foreign ships who were not Canadian citizens or landed immigrants under section 15(1). The issuance of pilotage certificates is limited to Canadian citizens or landed immigrants.

We had the statement of Mr. Macgillivray today that under section 14(1)(k) the Government or the pilotage authority could enact regulations entitling officers of foreign ships to meet the minimum requirements to navigate in the undesignated waters of the Great Lakes. However, we are not too sure as yet whether they would be issued a certificate or just given this permission by Canada so to navigate. If no certificate is issued, we wonder whether Canada can authorize these officers to navigate in American waters. This is all very well for Canadian waters; we have no doubt about this, in view of the statement made. But will the American Government or coastguard recognize Canada's action by way of regulation permitting these officers to navigate in the open waters of the Great Lakes? Perhaps when the time comes you may pursue this point with Mr. Macgillivray, and I suggest it respectfully.

This, honourable senators, completes my remarks. I repeat that from the start we have considered this to be a good bill. Even with some of the amendments we still consider it to be a good piece of legislation, which will improve the existing situation.

The Chairman: Thank you, Mr. Brisset. Are there any further witnesses to be heard before I ask the question? Are there any further questions by the committee of any of the witnesses?

Is there a motion to report the bill without amendment?

Hon. Senators: Agreed.

The Committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 9

WEDNESDAY, JUNE 23, 1971

Complete Proceedings on Bill C-240,

intituled:

"An Act to amend the Post Office Act"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

24143—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue	*Martin
Blois	McElman
Bourget	McGrand
Burchill	Michaud
Connolly (*Halifax North*)	Molson
Denis	Nichol
*Flynn	O'Leary
Fournier (*Madawaska-Restigouche*)	Petten
	Prowse
Haig	Rattenbury
Hayden	Robichaud
Isnor	Smith
Kinnear	Sparrow
Langlois	Welch—(26).
Macdonald (*Cape Breton*)	

**Ex officio Member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23rd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Gélinas, for the second reading of the Bill C-240, intituled: "An Act to amend the Post Office Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate.

24143—1½

Minutes of Proceedings

Wesnesday, June 23rd, 1971.
(9)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communicatins met this day at 4:00 p.m. for the consideration of Bill C-240, intituled: "An Act to amend the Post Office Act".

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Denis, Kinnear, McGrand, and Smith. (8)

Present but not of the Committee: The Honourable Senator Cameron.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel;

Upon motion of the Honourable Senator Blois it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

POST OFFICE DEPARTMENT:

Mr. F. Pageau, Director of Postal Rates and Classifications;

Mr. Arthur Boughner, Director, General Finance and Administration;

Mr. R. D. Myers, Director, Postal Service and Standards.

After discussion, and upon Motion, it was *Resolved* to report the said Bill without amendment.

At 4:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Wednesday, June 23rd, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-240, intituled: "An Act to amend the Post Office Act", has in obedience to the order of reference of June 23, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, June 23, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-240, to amend the Post Office Act, met this day at 4 p.m., to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We have with us Mr. F. Pageau, Director of Postal Rates and Classifications, Mr. Arthur C. Boughner, Director General Finance and Administration, and Mr. R. D. Myers, Director, Postal Service and Standards Branch—all of the Post Office Department.

I will ask Mr. Pageau to explain the bill.

Mr. F. Pageau, Director of Postal Rates and Classifications, Post Office Department: Thank you, Mr. Chairman. Honourable senators, I would like to explain briefly the amendments that are proposed in Bill C-240. Basically, the purpose of the bill is two-fold: firstly, to provide the Post Office with sufficient revenue to proceed with changes that are necessary to be able to provide the Canadian community with the service that it is entitled to; and, secondly, to permit it to make executive and administrative changes that will correspond to the program of decentralization that is now going on in the Post Office—that is, to try to have decisions made where the action takes place. This explains the delegation of powers that the Postmaster General is to give to the regional managers and district directors who are faced with the day-to-day problems. This power that the Post Office is requesting is exactly what exists in other statutes of Parliament.

Basically, we are asking for approval to increase the first-class mail rates from 6 cents to 7 cents as of July 1, and to 8 cents as of January 1 next. We are also adopting a new weight structure which actually is an advantage over the existing system. Now we charge for each ounce. For example, up to 16 ounces we used to charge 16 times the rate for the first ounce. The cost to the Post Office does not increase in proportion to the increase in weight, so we are adopting the philosophy of other countries, and this is why mailers, for instance, of items over seven ounces will pay less than they pay at the present time.

We are requesting that the Postmaster General have the power to set the rate for heavy times of first-class mail weighing over one pound. The reason is that since we pay for air transportation for each ounce over each mile over which the item is carried, it is not equitable to charge the sender of a ten-pound item from Ottawa to Toronto, for instance, the same as would be charged from Montreal to Vancouver. Because of this anomaly in the rate structure we are losing profitable traffic to private contractors who are getting in and eroding our market. Thus we are trying to increase our share of the market and especially to try to recoup what we have lost to private competitors.

Another item concerns the books for the blind, the law only provides for books, and here what we are doing is conforming to the practice in the Universal Postal Union. So what we are asking is to confirm what actually takes place and what is mandatory in the international service—that is, special consideration throughout the world for mailings made by the blind.

Another item of importance I am going to deal with is that as of July 1, legislators, members of the House of Commons and members of the Senate, will have the right, wherever they are, to mail official correspondence, whether they are at home or whether it is addressed to their home, free of postage. This is a major change.

A further one is that government departments in future will have to pay for the use of the postal services just as do our best customers, under arrangements that will be determined later.

There is another change, and perhaps this is a technical question. It deals with the opening of the mail by the Customs. The Department of National Revenue will reduce the number of ports, and now an item of first-class mail coming in international mail cannot be opened except by the addressee. If the addressee resides at quite a distance from the port of Customs, he may give the Customs authorities the right, in writing, to open the mail rather than having to make a trip to do it.

This, in summary, is the purpose of the bill.

The Chairman: Mr. Boughner?

Mr. Arthur Boughner, Director General, Finance and Administration, Post Office Department: Mr. Chairman and honourable senators, Mr. Pageau has summed up the purpose of Bill C-240, and I do not think there is anything I can add to what he has said, but I should be pleased to answer any questions.

Senator Burchill: What was the deficit last year for the Post Office?

Mr. Boughner: The deficit last year was $120 million. That is the sum that was forecast for 1970-71.

Senator Burchill: What is forecast with the new rates?

Mr. Boughner: For 1971-72 there is a total here of $38 million, which would work out to a forecast in the vicinity of about $70 million.

Senator Burchill: You expect to cut it in two.

The Chairman: Are there any further questions?

Do I have a motion to report the bill without amendment, or would you like to go through it clause by clause?

Senator Smith: I think Senator Cameron had a question to ask.

Senator Cameron: I am going to be very critical of the postal services for the last two or three years, and while I think there has been some improvement in the last ten months or so, it still leaves much to be desired.

My first comment is that I can understand that the cost of everything is going up, but in Senator Denis' presentation in the Senate he referred to hydro companies and other big business organzations passing the cost on. I have been operating a business at under $2 million a year, and the last increase cost us another $6,000 for postal services. The increase of one cent on July 1 will cost us another $7,000; and the further increase of one cent on January 1 will cost us an additional $7,000. This is a substantial increase, $20,000 on that much of a business in about two years. While I sympathize with your need to obtain more revenue, this bears rather heavily on a relatively small organization, as distinct from the big corporations mentioned by Senator Denis.

On the other hand, you subsidized *Reader's Digest* and *Time* to the extent of about $2 million last year. To me this does not make sense. What answer do you have for that?

Mr. Pageau: On this sudden increase of one cent and two cents comparisons are odious, as we say. At the same time, when you think of the size of the wage adjustments we have had to make as a result of a Royal Commission, of the working conditions, and the need to modernize our equipment and to look to the future, if you compare the increase in postage costs with the general index of anything else, comparitively, it is still lower than it was in 1955 and 1956. As I think Senator Denis pointed out, our rates are much lower, for instance, than those of other major countries, such as the United States, Australia, Germany and France. We also have to pay additional costs for transportation and equipment, and especially wages. To meet the needs of the future we have to mechanize and modernize. In this regard there is the cost of introducing a postal code which will help reduce costs, so that the $75 million for mechanization must be considered in conjunction with the code.

What you have said about the cost to the small businessman is true, but compared with other costs that businessmen have, the postal costs are not greater. If you use percentages, yes, if you use a very low base; when a charge of five and six cents is increased by one cent it is a big percentage. I think the minister said in the house that 80 per cent of the users are businesses, and the choice is either to try to get the business community or industry to pay for the service they use, or do it through the process of general taxation. This is the choice the minister said he had to make.

Senator Cameron: I am not complaining so much about the increase in cost. I recognize a certain amount of this is inevitable. Nevertheless, there was a big fanfare within the last couple of months about next-day-delivery when you put mail in the blue boxes. This has worked in some cases, but it is still far from working well. I mailed an important letter in Vancouver on Monday morning to catch the collection between 10 and 11 for delivery in Toronto. It has not arrived yet. These things can happen. As Senator Kinnear remarked in the Senate, as an extenuation, there could be bad weather, or something like this, but this has not been the case in this instance. There could be other reasons.

The Chairman: It probably flew Air Canada!

Senator Cameron: I must say that the deterioration in the postal service in the last three years has been a disgrace. You have a long way to go to improve it. Morale is not good. When you get people like Mr. Houle, who fortunately was defeated, speaking for postal people, it is an insult to any intelligent Canadian. He said, "We are not interested in getting better service. We are only interested in getting all the money we can." If this is the attitude that governs your employees, it bodes ill for the kind of service we can anticipate.

Mr. Pageau: The very question you put was raised in the transportation committee of the other place. I think the Deputy Postmaster General, Mr. Mackay, said at that time that the Post Office does realize that this assured mail delivery is something honest that the Post Office is doing. It is no longer possible for the Post Office to process 75 per cent of the mail between the hours of five and nine and think we can ship it in time to arrive at its destination the next morning to be processed, sent to the station and to the letter carriers. This mail delivery is being introduced. You start with a city in this way, and eventually you will link all cities. This involves changing the whole working process of the post offices, tagging the mail, changing staff. More people will work during the day now instead of working during the evening. That is a question of industrial relations. We intend the program in two years to cover the main cities, and eventually to include their surrounding areas.

For the first time all arrangements and activities are concentrated on delivering the mail at the time we say, rather than saying the mail "might" make it. Depending on the volume, more than the assured mail might be delivered.

Senator Cameron: Do you think we have some reason to hope that it will improve?

Mr. Pageau: We have introduced quality control. We control whether the mail is dispatched and whether the office of destination takes delivery. It is the first time the system has been introduced, and we will not reach 90 per cent at the beginning. We have people watching

whether we meet our commitment to the public at the office of dispatch. I think we have met that commitment and are still making a tremendous effort. The whole management is determined to improve the service, not only for first-class mail, but overall.

Senator Denis: Is the service tested in some way?

Mr. Pageau: When it was introduced in Toronto the Canadian Press decided to test the Post Office. They mailed 12 letters from different parts of the country and 11 were delivered within the time limit. There was a reason for the delay of the twelfth. Many of our mailers are now conducting tests in conjunction with us.

Senator Smith: The witnesses agree that we experience examples of the very worst type of service. However, we also have examples of the very best and almost unbelievably good service. For your satisfaction and in no other particular reason, I will tell you of one experience. I live in a small town in Nova Scotia 100 miles south of Halifax. The postmaster called me in when I went to get the mail and showed me two bundles of mail from Montreal postmarked at 1 a.m. that day. They were in the mail boxes in that town at 9 a.m. on the same day. He told me this was not exceptional. He was referring to the new truck service along the south shore of Nova Scotia, which has revolutionized the whole service. When my wife mails a letter in my home town in the evening I receive it here at nine o'clock. I get my Halifax newspaper around four or five o'clock every day.

I can tell you of many good experiences. I have had some bad ones also, but Senator Cameron has taken care of that part of it. I am hopeful that the service will be better and more regular. However, you will never beat fog as far as air transportation is concerned.

Mr. Pageau: We have the Director of Postal Services and Standards with us. He can vouch for the fact that the whole post office management here and in the field is concentrating on the need to restore the confidence we have lost. We have to restore the credibility in the Post Office.

Senator Cameron: Up until three years ago I used to receive mail from my western office, mailed at five o'clock the night before, here in Ottawa before noon. In the interval, up to just recently, it has taken from four to five days, and in the last month it took eight days for a letter to get from the Minister of National Defence on Elgin Street to my office. Obviously something peculiar went wrong. Your blue box service has resulted in quite an improvement, but you have a long way to go yet.

Mr. Boughner: We recognize that you are quite correct. We in the Post Office consider that the assured mail was a step in the right direction. We are running a quality assurance check on this system to ensure that we do reach a standard of service acceptable to the public.

Senator Kinnear: It is all very well to refer to the great service between cities on the main line from Halifax to Vancouver. What about those off the main line, in such a very busy area as Niagara, well populated, with several smaller cities? Great delay is experienced in the mail there. My mail takes three or four days from here to my home in Port Colborne. It only has to stop once, at Toronto.

When representatives of the Post Office appeared before another committee I asked this question. They replied that the delay was in Toronto because it was so overcrowded, with insufficient space to work. Such a condition can be tolerated only so long, then more space must be found to take care of the volume of mail to be sorted. Has anything been done in that area?

Mr. R. D. Myers, Director, Postal Services and Standards Branch, Post Office Department: We are working on that very hard at the moment. We are in the process of developing a whole new sortation process, including buildings and mechanized equipment, for Toronto. Most of this should be in place by about 1974.

Senator Kinnear: That is too long to wait for a busy area.

Mr. Myers: In the meantime, these out-of-the-way places, if I can use that expression...

Senator Kinnear: We think that it is Ottawa that is out of the way.

Mr. Myers: We will be dealing with this program very shortly.

The Chairman: Are there any further questions?

Senator Kinnear: I would like him to finish, please.

Senator Denis: It would mean that, in the case of the assured mail service, a lot of the mail would be handled during the day, so at night it would be less voluminous and there would be a greater chance that a letter to Senator Kinnear would reach him in time. When you mail your letter on Friday night, there is no mail on Saturday, and sometimes Monday is a holiday, so there are four days already gone.

The Chairman: Mr. Myers, would you finish answering Senator Kinnear?

Mr. Myers: As to the Niagara Peninsula, that particular area is due—I cannot remember the date, but it is not very far off—for the assured mail program. At that time the system should take care of the kind of delay the senator speaks of. I am not going to say it will be 100 per cent perfect on the day we turn it on, but it is in the works.

Senator Kinnear: Thank you. I hope it will, because I receive so many complaints about it. I remember asking at a particular time whether you were going to do it by truck or how, but maybe it is a secret process you are going to use. I really think that that area deserves prompt attention.

Senator Cameron: May I ask a question about the five-day delivery? This was one of the worst mistakes the Post Office made, and I put the blame squarely on Mr. Kierans and his advisors. Is there any thought of restor-

ing six-day mail service in the near future? If one wishes to mail a letter for a reasonably assured delivery on Monday morning, you have to get it into the mail before 4 o'clock on Thursday night. This does not make sense. I am speaking now of western Canada.

Mr. Myers: There is no thought, at least at the moment, of reintroducing six-day delivery service. There are probably two or three factors, one of which is that this costs a lot of money, probably in the order of $15 million.

Senator Cameron: It costs a lot more than that to the business community, because they have not got it.

Mr. Myers: I am not at all sure about that. The business community, by and large, can rent a box and get the mail if they must have it. It is surprising how many people in the country really agree with the five-day delivery service.

Senator Cameron: It is surprising how many people in the country have switched their business from the postal service to the facilities of the Greyhound, if they want a letter to be delivered at a certain time, all the time. Many firms in Calgary and Edmonton are doing the same thing. So you are losing money, and you are going to lose more money.

Mr. Myers: I do not know whether that is altogether due to the withdrawal of the Saturday service.

Senator Cameron: It is a big factor.

Senator Smith: This interests me, but I do not wish to argue with my friend Senator Cameron. In my experience, in the case of people you do business with—I do not know about the small towns on Saturday—certainly, when I walk down to the business district of Ottawa on a Saturday, I do not see anybody but the janitors. So what is all this about business needing the six-day service? If you are talking about people wanting mail service or wanting to work on their mail, outgoing or incoming, they can send mail out if they wish, but I do not see that anybody works on a Saturday any more. Is that a valid argument? I always assumed that was the reason.

Mr. Myers: I think the question is one of delivery. The Post Office, of course, works over the weekend. Mail is being processed and transported to the delivery office. There is no question of our simply stopping the processing of the mail over the weekend. On the question of delivery, if one has to have delivery on Saturday there are always boxes available. I do not see that the alternative services, such as Greyhound, offer anything better than this. They certainly do not deliver to the business firm or home. Someone must go down to the bus depot and get it.

To sum up what I have said, there is no thought at this time of reintroducing the Saturday service.

Mr. Pageau: Senator Cameron raised a good question, that businessmen sometimes resort to several means and pay a fair amount of money to get a message on Saturday because they are not ready to mail at 3 o'clock. We are reorienting the Post Office's attitude to meet the new needs of business in the field of speedy communications.

The bus companies are not providing a service the same day. However, we are already looking into the matter of speedier communications. We know that this is a new requirement, and our competitors are thriving on this business. They skim the milk and we have to go everywhere, to where there is perhaps no money. We are trying to get into this field. Several countries have done so already.

Senator Cameron: What times, after 4 o'clock on Thursday, can a letter be delivered to the main office, the Senate Post Office or the Besserer terminal so that one can be sure that it gets out? How many times does mail go out on Saturday, and does it go out on Sunday?

Mr. Myers: I cannot answer the question as to how many times it goes out.

Senator Cameron: Does it go out at all?

Mr. Myers: Yes.

Senator Smith: Are you talking about the Senate service?

Senator Cameron: No, because the Senate is closed. On Thursday you have to get a letter in before 4 o'clock to make sure that it gets out to Calgary. How many times is mail picked up at the Besserer Street post office or at the main post office on Saturday, and is it picked up on Sunday?

Mr. Myers: Yes. By and large, there would be one pick-up service on Sunday at the boxes in the city. On Saturday there are usually two.

Senator Cameron: Is it really two, or is it a question of hit and miss?

Mr. Myers: The main cities have two. I am not sure about Ottawa.

The Chairman: In Winnipeg we have two on Saturday and one on Sunday, at the letter boxes on the street.

Mr. Pageau: Mail is despatched in the usual way on available planes or highway service trucks. The post office will accept mail later.

Senator Blois: Are there any regulations as to what hours the post office opens for box holders? I have had a few complaints. For instance, on Saturdays post offices are often not open after 6 o'clock in the evening for people to get their mail from locked boxes.

Mr. Myers: The problem concerning locked boxes is perhaps one of the most confusing that we have to face. The general rule is to provide the hours of service that people require, if possible. The general rule is that in most offices throughout the country we leave the doors open for 24 hours unless there is a history of vandalism or other factors which mitigate against it. The general policy is to try to accommodate the service needs of the people in the particular location.

Senator Blois: But after six o'clock they are allowed to lock the door so that you cannot get to the box, is that correct?

Mr. Myers: They would be allowed to, yes.

Senator Blois: Many complaints arise from that, especially with regard to Saturdays. Even for myself, for example, when I am on vacation I find it very inconvenient if I miss the mail Saturday evening, by not getting there before six, because then I cannot get it until eight o'clock Monday morning. I am not complaining. I am just asking if it can be allowed.

Mr. Myers: As I have said, the policy is that we will leave them open for 24 hours, if we can.

Senator Blois: Surely, they could stay open later than six o'clock if they are only opening up at eight o'clock in the morning.

Mr. Myers: The problem is, if it is necessary to close them at all and, as a result, there is no staff on during the evening, then how do you get them locked after six o'clock?

Senator Blois: By the janitorial staff. That is the way it operates now in the places I am familiar with. The janitors are the ones who lock up. It is not the post office staff.

Mr. Myers: That would be true in only some cases.

Senator Blois: A number of cases. I have been told rather curtly by the postmaster that it is not their function to open and close doors for people. I do not think you realize how many people are affected by this, because, as a parliamentarian, I find myself, as most members of Parliament do, being questioned on this constantly, as if it were my fault. That is the reason I am interested in the answers.

Senator Smith: You need a new chamber of commerce, because in Liverpool we have had 24-hour service for years.

Senator Blois: Well, Liverpool is bigger.

The Chairman: Order, please! We will not have a discussion among the Maritime members of this committee. We are discussing the Post Office Act which applies across Canada. We will hear from Senator Argue.

Senator Argue: Mr. Chairman, I live in a small hamlet in Saskatchewan. For most of my life the mail service has been twice a week, delivered by CPR. Mail day was always, a big social event; everybody went to town on mail day. Then things improved. We now get mail six days a week and it is marvelous. It is so good that it has almost upset the social life of the community. Our delivery is by post office boxes; there is no rural delivery.

The question I wish to ask is whether there is any reason to believe that this kind of excellent service is not going to be maintained. Is there any move to cut it down? We are all happy with it; it is tremendous; it is the best we ever had. We never expected to have it half as good. We live out in a little hamlet and we get Saturday delivery. I come to Ottawa, the big city, and I do not get Saturday delivery, so we think it is marvelous and we hope it stays. Do you know of any reason why it should not continue?

The Chairman: Are there any further questions?

Senator Argue: Do I take it, though, that in a city like Ottawa you could have a post office box in the main post office and still get Saturday mail ? Is that correct?

Mr. Pageau: Yes.

Senator Argue: So it is the same service, but it just happens that out where I live we do not have door-to-door service and, therefore, it is in the box six days a week.

The Chairman: Are there any further questions?

Is there anything the witnesses wish to add to their submissions?

Senator Blois: Mr. Chairman, I do not think the mail is in the post office box six days a week. I know in my post office box I do not get any mail that is sorted after Friday afternoon. I do not think any mail is sorted on Saturday. I could be wrong. If so, I stand to be corrected.

Senator Smith: You are wrong.

Senator Blois: They do sort on Saturday?

Senator Smith: Yes.

Senator Argue: When we are in session.

The Chairman: Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

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