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Chair

The Honourable Judy A. Sgro

Standing Committee on Transport, Infrastructure and Communities

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•(0845)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call to order meeting number 27 of the Standing Committee on Transport, Infrastructure and Communities to discuss the study of the Navigation Protection Act.

Today we have with us the representatives of the Alberta Association of Municipal Districts and Counties, the Saskatchewan Association of Rural Municipalities,

[Translation]

the Fédération québécoise des municipalités

[English]

and the regional municipality of Argenteuil as well.

Thank you very much for taking the time to speak to us today and to add your comments on the Navigation Protection Act.

I will ask you to introduce yourselves as we go forward. Who would like to go first?

Mr. Kemmere, please go ahead.

Mr. Al Kemmere (President, Alberta Association of Municipal Districts and Counties): I want to thank you for the opportunity to present to the body today and give some of our perspectives on the Navigable Waters Protection Act. Just for a little bit of background, AAMDC, the Alberta Association of Municipal Districts and Counties, represents all the rural municipalities in Alberta. We cover 85% of the land base in this province. We cover the province from north to south, east to west, touching all other borders. We manage almost 4,400 bridges, which account for more than 60% of the total bridge inventory in the province.

For years rural municipalities have been working with the Navigable Waters Protection Act, so AAMDC has a strong position to speak to the impacts of the changes made to it from the 2012 rural municipal perspective. The former NWPA posed considerable challenges for municipalities, including that many water bodies that had not recently supported any navigation still required costly impact assessments. Many water bodies in Alberta are either used exclusively for irrigation or are not high enough to support navigation through seasonal runoffs. They would never actually be navigable, and yet they're still subject to the costs of an impact assessment.

Municipalities are often required to build much costlier bridges than they had originally planned in order to support navigation even

though the water body is not actively navigated. In many cases a proposed culvert would have been upgraded to a much more expensive bridge.

Municipalities are often faced with excessive delays in having their applications reviewed and approved by Transport Canada because of the broad scope of the previous legislation.

The definition of navigability has often varied from project to project, which would make municipal costs in complying with the previous legislation even less practical.

Repairs and modifications to older structures would often trigger the need for an impact assessment, even if the water body had not been navigated in recent history.

Rural municipal concerns with the previous act were not about their being closed to navigation or about federal oversight, but rather the unreasonable scope that the previous legislation placed on water bodies that obviously did not support navigation. The previous legislation did not utilize local knowledge on how water bodies were being used and therefore increased the cost to municipalities and to the Government of Canada.

The new legislation balances federal oversight with municipal autonomy. The new legislation allows the minister to add more water bodies to the schedule as they see fit and allows owners of works that have work [*Technical difficulty—Editor*] subject to the NPA, even if it's not on a scheduled water body, by opting into the process.

Clearly many different organizations manage works that cross water bodies. The municipalities are similar to the federal government in that they operate in the best interests of their constituents. If a non-scheduled water body is used for navigation, it is highly unlikely that the municipality will ignore that function when building a bridge or a culvert. Navigation is important to local economies and the quality of life, and the current NPA empowers municipalities to make those decisions locally.

With this background in mind, the AAMDC has a few recommendations for the committee to consider in reviewing the NPA.

First, the use of a schedule is a good idea and should be maintained. Including every water body in Canada is simply impractical. It showed in the extra work and cost that it caused municipalities and the capacity challenge it caused to Transport Canada.

Second, there may be value in expanding the schedule to include more water bodies, based on conversations with first nations, aboriginal groups, and other stakeholders who may be involved. The development of a formal process to propose and evaluate additions may be an effective compromise.

It is important that municipalities be treated as distinct from other owners and managers of works that cross water bodies. Municipalities make decisions in the best interests of their constituents and typically have a strong knowledge of whether a body is actually being used for navigation.

● (0850)

If the scope of the NPA is broadened to include more waterways, it must be matched by an increase in federal capacity to process the applications in a timely manner. It is important to remember that the NPA is ultimately about the safe navigation of Canada's water bodies. Other acts address environmental and land use concerns associated with works over water bodies, and expanding the NPA to address this will increase confusion among those who interact with the legislation.

Thank you for your time. I'll entertain questions at your call.

The Chair: Thank you very much, Mr. Kemmere. We very much appreciate your being very direct and to the point and making your comments as brief as possible.

Mr. Orb, would you like to go next?

Mr. Raymond Orb (President, Saskatchewan Association of Rural Municipalities): Yes.

Good morning, ladies and gentlemen. Thank you for the opportunity to speak to you about the Navigation Protection Act and its effect on municipalities in Saskatchewan.

My name is Ray Orb and I'm president of the Saskatchewan Association of Rural Municipalities, or SARM. We represent all 296 rural municipalities in the province.

I'm also here today to speak on behalf of the Federation of Canadian Municipalities, or FCM, in particular the rural forum of which I'm currently the chairperson.

SARM's concerns with the Navigation Protection Act are in regard to the added costs to municipal infrastructure projects. SARM's environmental concerns are already looked after by the environment departments, both federally and provincially.

Water quality and other important environmental considerations fall under the responsibility of both the federal and provincial environment departments. SARM is confident that they have the proper legislation and regulations in place to ensure that there is a strong balance between the environment and infrastructure projects.

Before amendments were made to the Navigation Protection Act, RMs, rural municipalities, faced increased costs, project delays, and generally more red tape when planning, designing, and constructing infrastructure projects. This was a result of the requirements to accommodate non-existent public water travel.

These requirements made sense in 1882 when the act was created. However, our modes of transportation have evolved drastically and the need for ensuring passage of canoes has decreased significantly.

This used to mean that projects involving culverts were required to be large enough to allow passage of canoes or other similar vessels. Municipalities were told by Transport Canada to redesign and alter their projects, which resulted in delays and increased costs. Unfortunately, these alterations were required even though there was no public travel on these waterways.

Take the example from the RM of Insinger, in the east central part of Saskatchewan. In 2005 they faced a series of delays in attempting to replace a bridge on the Whitesand River. A representative from Transport Canada deemed that the waterway was navigable, despite the many beaver dams, rocks, brush, and no one living in the area could recall a canoe attempting to travel this waterway.

The original project cost was \$125,000, and that proposal from Transport Canada would have cost \$400,000, an increase of \$275,000 from the original design. The RM and Transport Canada discussed this issue back and forth until SARM became involved in late 2005. Discussions continued until eventually the original project design was allowed to continue as planned. This delayed the project for well over a year.

A second example comes from the RM of Meadow Lake, in the northwest area of the province. In 2010 the RM applied for approval to construct a new road and bridge to cross Alcott Creek. The application was submitted in April 2010, and approval wasn't received until November 2011. In Saskatchewan our construction season ends in November, resulting in the RM of Meadow Lake having to wait two full construction seasons to start the project.

Upon receiving approval, the RM was required to raise the bridge above the existing road-top elevation to accommodate canoe traffic. This resulted in a hump in the road that is now experienced by several vehicles per day and will only accommodate a recreational canoe once every five years.

The amendments that came into force in 2014 addressed these concerns and allowed for municipalities to carry out their infrastructure projects without these unnecessary delays.

SARM and its membership are appreciative of these changes and are concerned that a review of these changes may result in a reversal. This would bring back the same old challenges that I have highlighted to you this morning.

We suggest that any amendments made as a result of this review take into consideration the positive effect that the amendments from 2014 have had on municipalities. SARM recommends that the federal government remain committed to these amendments which reduced the financial burden on municipalities.

● (0855)

On the FCM rural forum, I would also like to add the following points to consider.

The FCM rural forum is mandated by FCM to deal with real specific issues, and it's composed of member municipalities all across rural Canada.

The FCM welcomed changes to the Navigation Protection Act brought about in 2012, which eliminated unnecessary requirements to accommodate non-existent public water travel. The amendments allowed the existing legislation to be brought up to date and into line with the country's current transportation routes.

By reducing project delays and higher building costs to municipalities, while at the same time providing protection to these important waterways, the changes to the Navigation Protection Act directly related to municipal concerns aimed at improving the capacity of local governments to build infrastructure and to deliver essential services. To make environmental planning easier, the federal government also recognized the limited capacity of rural municipalities and ensured that these communities have access to rural-specific resources, including tools, expertise, and financial capacity.

At this moment when the federal government has committed to community building as nation building, rural municipalities must be full partners in plotting the path forward. It will take continued dialogue to build Canada's future, with durable growth and more livable communities. Through FCM, rural Canada will continue to have a full seat at the table.

Thank you for the opportunity to speak this morning.

• (0900)

The Chair: Thank you very much, Mr. Orb.

We will now move to teleconferencing with Mr. Pearce.

Mr. Scott Pearce (Administrator, Fédération québécoise des municipalités): Good morning. I'm Scott Pearce. First, I would like to thank the committee for this consultation and their interest in the opinion of the Quebec federation of municipalities.

I have the pleasure of sitting on the FCM board of directors with Mr. Kemmere and Mr. Orb. The three of us make up the chair and two vice-chairs of the FCM rural forum. While Quebec's opinion may differ, for different reasons, I support everything they've said so far today.

As I said, I am here representing the Quebec federation of municipalities, which is 1,200 municipalities in Quebec, with over three million lakes and rivers.

I'll be as brief as I can, given the time allotted to us. I would like to summarize what we've retained from the 2014 amendments: a name change to better reflect the intention of the act; addition to the law of an appendix that lists navigable waters for which necessary regulatory approval is required to build structures that might interfere with navigation significantly; the public right to navigation; and the right to use navigable waters as a road, which continues to be protected in Canada under common law, whether the waterway is or is not included in the annex of the act.

We are here to comment on the four points related to these changes. Our concerns are more environmental. Comments from the FQM will be pretty much just on that. Regarding the effectiveness of the changes globally from a user perspective, with other laws that affect all users, we want to actually talk to the committee about the overall effectiveness of these changes in the context of the management of boating.

The change of name clearly indicates that we want to protect navigation instead of navigable waters. FQM has focused its priorities on the issue of regulations on boating. On September 29, we had a resolution, which we have forwarded to you.

It is so important that priority be given to bodies of water and their environmental protection before protecting pleasure boating. The law on merchant marine and the office of boating safety doesn't protect lakes adequately, because these laws deal with navigation without a clear distinction between pleasure and commercial transport and relegate the water as a secondary consideration. The lakes and rivers of Canada are our natural wealth, and once the watershed is damaged, we have a long way to come back.

Concerning navigable waters, the new annexes remove the largest share of Quebec lakes to keep only three: Lac des Deux Montagnes, Lac Memphrémagog, and Lac Saint-Jean. Besides the Saint Lawrence River, five of our major rivers are also included: Rivière des Mille-Îles, Rivière des Prairies, Richelieu River, Rivière Saint-Maurice, and Saguenay River.

Those bodies of water have one thing in common: they are navigable and they all have serious environmental problems related to pleasure boating. They're not alone. All the navigable lakes not listed on this list have the same problems, often exacerbated due to their less extensive surface areas.

On the public right to navigation, the FQM considers that boating is not a right. The public right to navigation, a principle of common law, comes from an antiquated thought process mainly based on trade. Boating should not be considered a right. It's not economically feasible nor safe, and is less sustainable. It's a privilege that has otherwise endangered and degraded the lakes. The FQM hopes to address this issue further with the Minister of Transport as soon as the opportunity arises. It is for us, absolutely fundamental.

The right to use a waterway as a road is unsustainable. Supporting this principle is to ignore that each lake or river has its own morphology and its weaknesses, banks, shallows, swamps, and spawning areas, just to name a few.

Imagining that a lake is a road is unthinkable as to believe we could move either by car, bike, or walk in any area of a Canadian park without restriction, arguing that the place is public. This idea would not occur to anyone, even if their right to travel is essential. So this is not the case of navigation.

There are rules in parks and there must be rules on lakes. It should be added that on the roads there are limits, and national and provincial standards governing the roads and highways. In the case of lakes, not only is the water considered a road, but in addition, there are very few restrictions, obtained in each case through a very long and expensive procedure, which makes it almost impossible for local municipalities to regulate their own bodies of water.

Many of the lakes are suffering severe problems because there are no protections.

● (0905)

The amendments to the act on the protection of navigation overall, interrelated with the Canada Shipping Act and the regulation on restrictions on the use of buildings, are inefficient and have serious implications for users: ecological damage, harm to public health, security problems, economic concerns, engagement of public access, and reduced quality of life.

For the FQM, it is urgent to find solutions to manage boating efficiently, ecologically, and in ways that are economically profitable. This natural resource must become safer and remain accessible to all Canadians before the damage observed today is irreversible.

The municipal sector is very interested in supporting the government in this task. We need to work together to find solutions. We have proposed a working group led by the federal government, including municipalities and watershed management folks, who are the closest stakeholders on the ground, and it would be a first step towards the necessary changes to be considered for the management of recreational boating on inland waters in Canada.

I have now stated what the FQM professionals have put together for me to discuss with you. I'll just go on a more personal level for the next 30 seconds.

I am a fisherman. I am the mayor of my town and the warden of my region and I sit on the FQM and the FCM. We have a serious problem. The way our laws are, people can bring boats of any size onto small lakes across the country. What it's doing is damaging our shorelines in ways we've never seen. I am not a hard-line environmentalist; I am an average Canadian. Frankly, we need the government's help, because the damage that is being done is going to be irreversible.

The FCM as well as the FQM passed a resolution regarding the boating, but I often talk to people in what I think is a simple way to look at it. An average person takes a bath in their bathtub at home, and it's not really a problem, but when you put a 1,000-pound person into a regular bathtub, you have a problem. This is exactly what's happening on our lakes throughout this country at this point. We need the federal government to work with municipalities to protect our water for all Canadians.

I thank you so very much for taking the time to listen to us.

The Chair: Thank you very much.

Thank you to all of you. As you would know, we have a lot of members interested in asking some critically important questions.

I'm going to turn to Ms. Block for six minutes.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): I want to welcome all of our witnesses here today. Even though it's through video and teleconferencing, it's good to hear the testimony you bring.

I also want to acknowledge the background briefing material we received from our analyst the week before we broke to be in our ridings. I think it reminded us that the changes to the Navigable Waters Protection Act actually started long before they were enshrined in legislation; I think she noted it as being back in 2009.

I also recognize that a number of you have appeared before this committee two or three times to share your thoughts, your concerns, and perhaps your recommendations on how this legislation needs to be changed.

I have in my hand an article that was published in *The Hill Times* on September 14, with the headline "Leave Navigation Protection Act 'as is,' say municipalities". That article sparked quite a lively debate here in committee and in the media, as both the parliamentary secretary, Kate Young, and a departmental official indicated that the study would be done and a report would be tabled in early 2017, even before the committee had decided to undertake this study.

We know that undertaking this study is in the minister's mandate letter and that the letter is pretty clear about restoring the protections that were changed in 2014. We know that there is a view to do this in early 2017.

I agree with the headline of that article, which says to leave the Navigation Protection Act as is. I think there was a lot of good work done to get that act to where it is so that it could remove the barriers that many municipalities were facing when dealing with the issues they have to deal with, in rural Canada especially. We know that there is ministerial discretion built into the act whereby waterways can be added or removed, if a municipality applies to have that done.

Because I agree with the headline in this article and believe that we got it right, I am going to offer the rest of my time to my colleagues across the table. Most of them are new to this committee, and it's obvious that they are the driving force behind this study, so I'm going to offer them the rest of my time to ask questions of the municipalities.

● (0910)

The Chair: That's excellent. Thank you very much for being so co-operative, Ms. Block, as we move forward on this.

We'll go to Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thanks, Ms. Block, I appreciate that.

As Ms. Block noted, everybody on the Liberal side of the table is new. We were consuming negative public feedback when the changes to the act were brought in. I am from British Columbia, where there's a very robust environmental sector. There was doom and gloom being spread everywhere about the implications of this. However, when we really looked at taking on a review of the Navigation Protection Act, it was more to fulfill what we saw was a missed obligation to actually go out and consult.

I understand that there was a sense of urgency on the part of the previous government to get economic activity going and to get construction projects under way and completed. You can't disagree with that, but at the same time, we come in. I think I can speak for the whole group. We are not ideologically bent on rolling something back just because somebody else did it. We think, in fact, that, as you've noted, there have been some benefits to these changes. We want to preserve those while at the same time perhaps taking a little extra time to reflect on others' views of what should happen. With that in mind, I have a number of questions.

First, we'll go to you, Mr. Kemmere. Has there been enough time for municipalities to experience the new regime, the new Navigation Protection Act? Have you had a chance to see the difference in how your projects are conducted under the new act?

Mr. Al Kemmere: Municipalities already shared with us their ability to move forward on works that are crossing the rivers and streams. They have been able to be expedited. Rather than taking a year and a half, they're down to a four-month process of approvals for all the environmental aspects. At the same time, the structures that are being dealt with are adequate to the municipality and also adequate to look after the environmental health of the streams. Our members are sharing with us that there have definitely been improvements.

Mr. Ken Hardie: Great, thank you for that.

We'll swing to you, Mr. Orb.

In terms of the projects that have gone forward, is it customary that the individual municipalities adopt some kind of standardized mechanism for getting public input before a project goes forward? In other words, do you open the doors to hear from the public on a proposal to build a culvert instead of a bridge, for instance?

Mr. Raymond Orb: It's not necessary other than going through the standard procedure of doing tendering and things like that. If it's an existing bridge or a culvert, there isn't a consultation period unless, I suppose, they're looking at altering waterways, the flow of water, and things like that. If it is kind of business as usual, there is not a consultation period that's needed. The exception would be, of course, with first nations. If it affected a first nations reserve, or it affected a waterway on a reserve or something like that, there would be a consultation done. The duty to consult would be a standard procedure.

It's not a standard procedure to have to consult. In a lot of cases, the water only runs for a few weeks during the spring runoff. It's not considered by us to be a navigable water. That's the issue, because before the regulations were changed, we were forced to go through all of the stringent regulations that were in place to have access for watercraft to go down the stream. These are simply streams that don't

run very much during the year, so it's something that we see as a low priority.

● (0915)

Mr. Ken Hardie: I'll open this up to everybody on the teleconference or on the video conference.

Has there been any adverse public reaction that you have on record to any of the projects that you've taken forward?

Mr. Al Kemmere: From an Alberta point of view, I am not aware of any adverse push-back or any adverse concerns that have come forward.

Mr. Ken Hardie: What about Saskatchewan?

Mr. Raymond Orb: I would say the same thing. We've only had positive feedback from our members. Of course, we've since speeded up the process.

Mr. Ken Hardie: Okay.

What about Quebec?

Mr. Scott Pearce: There has not, at this point. Everything seems to be going well.

Mr. Ken Hardie: There is a principle that I've learned to respect even more over time, the principle of fair process, whereby, when you have the doors open and you allow for public input on issues, if there is none, you can take that as a signal that things have been going along pretty well okay.

The one thing that popped out to me in the new act that might be problematic is that the only recourse for somebody who really does have an issue with what's being proposed or with what has already been done is the courts, which can be—it's the same thing you spoke about in terms of the old process—time-consuming and expensive.

Would you be agreeable to a perhaps more amenable system for public input and public objections to a particular project that didn't involve somebody having to wait until it's done and then go to court?

Mr. Raymond Orb: May I comment on that?

Mr. Ken Hardie: Go ahead. We'll go to Saskatchewan first.

Mr. Raymond Orb: I would comment on that to say that our municipal council meetings are all open to the public. In the case of tendering, which applies to most of the construction infrastructure projects, either culverts or bridges, they are advertised to the general public. People see that.

I think that if people have issues, whether we're changing or taking out a bridge and installing a culvert, people would get back to our local politicians pretty quickly if they had concerns about it.

Mr. Ken Hardie: Is it possible to send along to us a couple of examples of these processes that have been advertised in a given municipality so that we can go back and look at the minutes of those meetings, etc.? I would like to familiarize myself with the process that's being used right now. This may not be the greatest analogy, but the changes to the act were made for a reason, and we don't want to throw out the good reason—the baby with the bathwater kind of thing.

Has the—

The Chair: Mr. Hardie, I'm sorry, but your time has is up.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you very much, Madam Chair.

I also thank our guests for being here this morning.

You are our eyes and ears on the ground. In the span of a few minutes, we are going to be able to cover more municipalities than anything we would be able to do during the hours devoted to the study.

My first question has two parts and is for all of you. For the first part, I would ask that you provide a yes or no answer. If the answer is yes, an explanation will be required.

When the minister appeared at the very beginning of our study, he said that no less than 40 bills, most of which I suspect were private members' bills, have been introduced to add a waterway to the list set out in the legislation. Have the members you are representing asked that a body of water be added to that list, yes or no?

If the answer is yes, what was the process to add that body of water, river or lake to the list set out in the legislation?

Perhaps you could answer in the same order in which you made your presentations this morning.

Let's start with Alberta.

• (0920)

[*English*]

Mr. Al Kemmere: To my knowledge, we have not had any requests to have additions or appeals to any projects that way. I am not aware of any.

[*Translation*]

Mr. Robert Aubin: Thank you.

What about Saskatchewan?

[*English*]

Mr. Raymond Orb: No, we haven't had any requests from our members.

[*Translation*]

Mr. Robert Aubin: Thank you.

Now, let's turn to Quebec.

Mr. Scott Pearce: So far, there have been none.

Mr. Robert Aubin: Thank you, that answers my first question.

My second question is about the reverse onus. We know that Transport Canada no longer accepts complaints. Consequently, a citizen, a group of citizens or an association wanting to object must now obtain a legal recourse. In any of the municipalities you are representing, have you received those types of complaints? Have you had to deal with that?

Please answer in the same order, starting with Alberta.

[*English*]

Mr. Al Kemmere: Presently, to my knowledge, we have not received any complaints. Be aware that we don't have a direct link

into every municipal decision-making body, but to my knowledge, we have not had any.

[*Translation*]

Mr. Robert Aubin: Thank you.

Mr. Orb, I'm listening.

[*English*]

Mr. Raymond Orb: None that I know about up to this point.

[*Translation*]

Mr. Robert Aubin: Thank you.

Mr. Pearce, you have the floor.

Mr. Scott Pearce: We basically receive one complaint a day, but not about projects. The complaints have more to do with the size of the boats that have the right to navigate our waterways. They are often very large and cause environmental damage. That's more the type of complaint that we receive pretty much every day.

Mr. Robert Aubin: Thank you, Mr. Pearce. Let me take this opportunity to ask you another question directly, because your environmental concerns in particular caught my attention during your presentation.

As we know, under this navigation protection act, all the pipeline assessments were removed and redirected to the National Energy Board.

Do you think the situation is the same, better or worse as a result of this transfer of expertise from Transport Canada to the National Energy Board?

Mr. Scott Pearce: The way the legislation is worded imposes no limit on the size of the boats allowed to use navigable waterways. As a result, boats that are too big and that create five- to six-foot waves and major damage to the shoreline are found on small recreational lakes in Quebec, Ontario or Alberta.

Municipalities would like the Government of Canada to at least implement the rules. It is not normal that a 100-foot boat, weighing 100,000 pounds, has the right to sail on a small navigable lake. There is not much we can do to repair the damage once it is caused. It is already too late.

Mr. Robert Aubin: Thank you.

Have the amendments to the former Navigable Waters Act and to the current Navigation Protection Act changed your relationships or your consultations with other levels of government?

In other words, have provincial or municipal authorities changed their ways as a result of those amendments?

Mr. Scott Pearce: Would you first like to hear the answer of the folks from Alberta and Saskatchewan?

[*English*]

Mr. Al Kemmere: From the Alberta point of view, I think it's only helped enhance our relationships with the various levels of government as the processes have been able to be expedited. We know that there are still eyes on the important items, but I believe that in all three levels of government, we've been able to see processes being expedited and as a result, the relationships I think have been enhanced.

[Translation]

Mr. Robert Aubin: Thank you.

We'll go back to Mr. Orb.

[English]

Mr. Raymond Orb: I don't think it's changed the relationship with our senior levels of government. In the case of projects that are approved, that receive grants, they could be, for instance, Building Canada, that could be a project that's approved to install a bridge or a culvert. The necessary permits are still in order. Are there aquatic permits as the case may be? There are permits from Environment that still have to be approved. Those people are still out there. They're still looking at the projects.

As my colleague from Alberta has stated, it simply expedites the process and that's what we're pleased with. We're pleased with the regulations in their current state.

• (0925)

The Chair: Thank you very much, Mr. Aubin. Thank you to our witnesses.

Mr. Fraser.

Mr. Sean Fraser (Central Nova, Lib.): I'd like to kick things off by saying that I think I sensed a little hesitancy at the outset of some of your testimony about the potential of there being serious changes made to the legislation that might run counter to what your wishes are.

If I could reflect the comments of my colleague, Mr. Hardie, we've learned in some of the testimony that there are actually some good changes that have been made. To the extent that there are positive developments, we don't want to further drive up the expenses to municipalities for the sake of making projects more expensive. I'd like to put your minds at ease there. At the same time, we do want to make sure that the legislation operates as it was intended to.

By way of background, I think we may have wildly different experiences. I'm from out in Nova Scotia where I'm surrounded by coast five minutes from my house at any given point in time. A lot of local businesses in fact use lakes or rivers to get their products to market as well. So it's sometimes a business-friendly approach that we take to making sure that there's a free right of navigation in their relationship with municipal works.

I'd like to give you an opportunity to explain if there are projects that you have been able to take on as a result of the changes to the legislation we're dealing with that weren't possible before.

Maybe respond in the order that you testified.

Mr. Al Kemmere: In terms of projects that we have taken on, I can't say that there are extra projects that we have taken on. I believe we've been trying to respond to the needs that have been on the landscape for many years.

You make an interesting point with the roles they play in Nova Scotia compared to Alberta, because there is not a lot of trade on our rivers and streams, only because we are landlocked and so we don't have access to the major bodies of water that you would need to do trade on.

Many of the items that we ran into problems with on this, as Ray Orb pointed out, are streams that are barely navigable for one month of the year because they're intermittent streams that only happen at runoff time, and they are truly not navigable year-round. Those are the ones where we ran into as many issues with our process as reasonable....

There are streams, major streams, that could be navigable waters for trade that are still protected under the act in Alberta and they are listed in the schedule. If there are new ones to be identified that are necessary to enhance trade or to enhance the oversight, then they can be added to that list. That's one of the great things about this. The minister has that discretion through an application process. I think that addresses any future trade needs that could come forward.

Mr. Sean Fraser: Before we move on to the other witnesses, I think you hit on something that's important to me in my region of the country.

The application process, as far as I understand it, is limited to municipalities or potentially provincial governments, I would argue, under the wording of the legislation, not that it matters greatly for present purposes. Is there a mechanism in place that allows users of the waterway, whether for recreational purposes, traditional purposes, or economic purposes, let's say a local business that wants to get their product onto a river for trade, to bring it to a municipality? If they don't have the power to apply, is there a mechanism to allow them to ask you to do it on their behalf? Has that ever happened? Do you see a mechanism there?

Mr. Al Kemmere: I don't see that it has happened, but I think as a municipal government if we have a local businessperson or local residents who are looking for exactly what you're speaking about, that would be council's role, to work through that request and then decide to move it forward that way.

Mr. Sean Fraser: I'll give the other witnesses an opportunity to perhaps elaborate on whether the changes made have allowed them to take on projects that may not have been possible before the changes were made.

• (0930)

Mr. Raymond Orb: I'd like to answer that.

In Saskatchewan we have the municipal roads for the economy program, and our province allocates funding to the rural municipalities that can apply. The ones that meet the criteria for the program can actually receive funding. We can send to the committee the list of the projects that have gone ahead. I think those projects could have gone ahead before the rules were changed on navigable waters, but as I stated, they would have been delayed, and they would have been very costly. I think a lot of those projects would not have been able to go ahead if the regulations had not been changed.

Right now, the process is working the way we would like it to work. As I mentioned, we still have the checks and balances along the way with Environment, but we can certainly forward that list.

I'd just like to make a comment. Part of the problem is municipalities across the country only receive about eight cents out of every tax dollar. Those are the funds that we operate with. That's not unique to Saskatchewan. I think it's very common across the country. We need funding from Building Canada. Saskatchewan municipalities, the smaller ones, like the rural municipalities, haven't received much funding, in most cases none from Building Canada. We're using our own provincial money. So we're making a pitch, of course, to have the criteria changed so that rural municipalities and smaller communities can qualify for the funding.

We can certainly send you the list of the projects that we're doing now.

Mr. Sean Fraser: Sure, and as a rural MP, that's something I'm interested in as well.

The Chair: Your time is up, Mr. Fraser. Thank you very much.

Mr. Sikand.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Madam Chair, I'll be sharing my time with my colleague, Mr. Iacono.

My colleagues have touched upon this but I'd like some further clarification from each of you, please.

Transport Canada's navigation program no longer accepts complaints about works that impede navigation on unlisted waterways. Individuals who believe that a work on an unlisted waterway has an impact on the public right to navigation need to seek a court order to resolve the issue. Have any of the municipalities you represent been taken to court following the receipt of a complaint about a non-compliant municipal work on an unlisted waterway?

Mr. Al Kemmere: From an Alberta point of view, I don't know of any. I would hope that communication would take place at the council level, long before they would see if they would go to court.

Mr. Raymond Orb: As far as I know, there haven't been any municipalities that have been taken to court.

I would just like to mention one thing. There is the Trans Canada Trail across the country which is due to be completed before 2017. We have lots of blue ways, designated routes for people to travel on our waterways, by canoe especially. In Saskatchewan, our trail has just been completed, and we have signs up that people can use, when they put their canoes in, to travel down the waterway.

We think it's making a big difference that people who want to use it for recreation or for short travel distances can use that route.

Mr. Gagan Sikand: You don't know of any complaints being taken to court.

Mr. Raymond Orb: No. None.

Mr. Gagan Sikand: Thank you. That's my question.

The Chair: Mr. Iacono, go ahead.

[Translation]

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you, Madam Chair.

Gentlemen, thank you for being here this morning.

I have a question for Scott Pearce.

How can the legislation be amended to better protect navigable waters?

Mr. Scott Pearce: Thank you so much for your question, sir.

First of all, there is no conflict in terms of the right of navigation to bring our products to market or to perform infrastructure work needed on the waterways.

Here's the problem. Based on the way the legislation is worded, there is no limit on the size of vessels on our waterways, which means that the waterways are dying.

There are several ways to look at the problem. A number of experts have conducted studies on the issue. Clearly, we must start with the damage caused by a boat that is too large for a waterway and that may create waves five or six feet high, destroying the shoreline.

There is no limit. Take the example of a person who has a cottage or a house in Quebec City by a lake that is three kilometres long and 7.5 metres deep. Legally, the person has the right to bring a 60-metre-long boat on the lake from Lake Ontario. The municipality cannot do anything to stop them.

This means that there are no constraints on the navigation on our waterways. There are no constraints on the size and weight of the boats or the waves they make. Unfortunately, as they say, it's the wild west on our lakes and rivers. The sky's the limit. Without a limit, of course people will take advantage and think bigger and bigger.

Does that answer your question, sir?

● (0935)

Mr. Angelo Iacono: Yes.

Madam Chair, do I still have time?

[English]

The Chair: You still have two and half minutes.

Mr. Angelo Iacono: I'll take this opportunity to share my time with my colleague, David Graham.

The Chair: Mr. Graham, go ahead.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

Mr. Pearce, I am your neighbour from the Laurentians. I've read about you in *Main Street*. It's a pleasure to sort of meet you through the system.

Mr. Scott Pearce: I know a lot about you as well, sir.

Mr. David de Burgh Graham: That's always concerning.

As you know, our region has huge problems with lakes. It's one of the biggest issues in my riding, after Internet access.

I heard you talking to Angelo. I missed the beginning of your presentation. I'm sorry about that.

Could I ask you what your ideas are for solutions on dealing with these lake problems? I know that in Sainte-Agathe, for example, we've had studies that demonstrate lake depth and distance from shoreline where large boats are permissible, and I know that this is not a unanimous position. I wonder what your thoughts are.

Mr. Scott Pearce: The way we look at it at the FQM level is that the federal government has to find some sort of common ground. As you know, boats are getting bigger and bigger, and the lakes are not getting bigger. It could be something based on—

Mr. Luc Berthold (Mégantic—L'Érable, CPC): I have a point of order, Madam Chair.

I think this is not relevant to the study we are now studying here. These are environmental issues. I'm speaking in English; I'm sorry.

The Chair: You're doing a very good job, Mr. Berthold. It's much better than my French.

[Translation]

Mr. Luc Berthold: I don't think the question is really relevant to the study that we are doing right now.

Mr. Scott Pearce: Sir, I would like to answer that.

[English]

The Chair: Excuse me for just one moment.

I recognize that, but it was Mr. Iacono's time. He is sharing it with Mr. Graham. If they want to use the other half a minute left to answer it, even though you're very correct that it's starting to go into a different area, I will allow that 35 seconds remaining for the answer.

Mr. David de Burgh Graham: Mr. Pearce, I'll give you the opportunity to respond.

Mr. Scott Pearce: Just briefly, yes, it is an environmental issue, but the environmental issue is caused by the Ministry of Transport. This is a transport problem that is having an impact on the environment, so there is a direct link.

The Chair: Thank you both very much.

Mr. Berthold.

[Translation]

Mr. Luc Berthold: Madam Chair, I'll be sharing my time with Mr. Rayes. We agreed on a small change.

[English]

The Chair: Welcome, Mr. Rayes. We're glad to have you with us.

[Translation]

Mr. Alain Rayes (Richmond—Arthabaska, CPC): Thank you very much, Madam Chair. I am pleased to join your committee.

I support what my colleague, Mr. Berthold, said about the last topic that was discussed. I think Quebec's ministry of sustainable development, environment and the fight against climate change and the federal Department of Environment and Climate Change could help a great deal in that area.

I would like to turn to the mandate letter to go back to the crux of the matter. Minister Garneau's mandate letter states:

Work with the Minister of Fisheries, Oceans and the Canadian Coast Guard to review the previous government's changes to the Fisheries Act and the Navigable Waters Protection Act, restore lost protections...

Personally, I think that, if the idea is to restore that, there's nothing to discuss as the Liberals simply want to reverse all measures put in place and return to the past. But as I listen to you, I don't feel that you want to backtrack and undo what has been done in the previous amendments.

The quotation continues as follows: "...and incorporate modern safeguards." If that's the case, perhaps the minister can tell us what he wants to do. The committee could then do its study, consult experts to confirm it, and say whether it's good or not.

Gentlemen, I would like to hear what you have to say about that. First, those from Alberta and Saskatchewan, followed by the representative from the Fédération québécoise des municipalités.

● (0940)

[English]

The Chair: Mr. Kemmere.

Mr. Al Kemmere: Our concerns were with going back to an act that was written in days long before the modern world of today. I missed part of your question, but our concerns are still that we have this opportunity to be heard and try to retain what we felt was progressive legislation. That's why we're here.

I know this may not answer your question, so I may have to ask you to repeat the core of it.

[Translation]

Mr. Alain Rayes: I would like to hear from the other witness. I will come back to it later if we have enough time.

[English]

The Chair: Mr. Orb.

Mr. Raymond Orb: I think what you're asking is about the process.

When the previous government was looking at making the changes, we already knew what the regulation changes would be and we were onside. I've appeared in front of the transport committee many times on this issue, and my colleagues across Alberta did the same, and I think Manitoba did, too. Although we like to be consulted, we're a little bit concerned. We saw this idea being thrown out during the federal election and we were concerned about it. We're not sure why the government wanted to do it, but nevertheless, we would still get our point across that we would like to leave the regulations in place.

[Translation]

Mr. Alain Rayes: Thank you.

I will have to give the floor to my colleague, Mr. Berthold. I apologize for not allowing you to speak, Mr. Pearce. I just want to say that we are having discussions in many committees right now, but we don't know what the projects are. I can tell you that it's very frustrating for us as well.

I turn the floor over to Mr. Berthold.

Mr. Luc Berthold: Thank you very much.

Yes, that's what's frustrating. We want to know what the amendments are because the Minister clearly has something in mind.

To my colleagues opposite who are doing the exercise in good faith, this is unfortunately not what the minister has in mind. In question period, on October 6, the Minister of Fisheries, Oceans and the Canadian Coast Guard said that the purpose of the consultation on the Navigation Protection Act was—and I will read the quote in English:

[English]

...not simply how to cut and paste the protections that were in the previous legislation that was deleted by the Conservatives, but how we could further strengthen them....

[Translation]

You are telling the witnesses that you want to keep what was good. But that is not at all in line with the intent of the bill.

In closing, Madam Chair, in light of the testimony we have heard this morning, I would like to move a motion as follows:

Whereas the municipality associations have confirmed that they have not received complaints and have not requested that bodies of water be added, I ask that the Committee immediately cease its study of the Navigation Protection Act.

[English]

The Chair: Thank you very much, Mr. Berthold.

Does he need 48 hours?

The Clerk of the Committee (Mr. Andrew Bartholomew Chaplin): Unless there is unanimous consent, normally there is a notice period.

The Chair: There is a notice period, as you know, Mr. Berthold, of 48 hours. We will deal with that motion, if you like, at the next meeting or the one after that.

Mr. Luc Berthold: Yes, that's okay.

Mr. Ken Hardie: Madam Chair, I have a point of order. This side is prepared to waive the 48 hours' notice and have a vote.

The Chair: Is that the wish of the committee?

Mr. Aubin.

• (0945)

Mr. Robert Aubin: Yes.

The Chair: At this point I will thank the witnesses for their participation.

We very much appreciate your taking valuable time to come and help us with this review. At the end of our review, it could end up that we simply say that we think everything is working and functioning well. Part of what we're looking at are interferences to navigation that should be regulated or prohibited and how best to implement these under legislation. We're looking for advice as to where we are today and how to make it better, recognizing that there are certainly some improvements that were very necessary. That's where we are, from our committee's perspective.

Thank you very much for participating.

Would you like to read out that motion again, please.

[Translation]

The Clerk: The motion reads as follows:

Whereas the municipality associations have confirmed that they have not received complaints and have not requested that bodies of water be added, I ask that the Committee immediately cease its study of the Navigation Protection Act.

[English]

The Chair: Thank you very much, Mr. Berthold.

(Motion negated)

The Chair: Moving along, our next guests are the Canadian Energy Pipeline Association, as well as Michael Atkinson from the Canadian Construction Association.

We will just continue on with our list if that's okay with everyone.

Mr. Atkinson, welcome to our committee.

Mr. Michael Atkinson (President, Canadian Construction Association): Thank you.

Madam Chair and honourable members, it is a pleasure to be here with you today.

The Canadian Construction Association represents the non-residential sector in the construction industry in Canada. We build Canada's infrastructure: shopping malls, industrial facilities, schools, hospitals, and condominium developments. Essentially, we build everything except single-family homes.

We have an integrated membership structure of some 70 local and provincial associations from coast to coast to coast, with a membership of just over 20,000 firms, more than 95% of which are small and medium-sized businesses.

As a whole, the construction industry employs approximately 1.4 million Canadians and accounts for 7% of Canada's overall gross domestic product, so it's fair to say that we're an essential element of the economic viability of Canada.

We very much appreciate the opportunity to be before you and to share some of our views on the Navigation Protection Act.

Let me start by saying that our members were very pleased with the changes made in 2012 in conjunction with amendments made to both the Fisheries Act and the Canadian Environmental Assessment Act. It has been said that the 2012 changes to the Navigable Waters Protection Act reduced environmental protections across the country. We couldn't disagree more.

To begin with, the amended act was no longer a trigger for the environmental assessment under the Canadian Environmental Assessment Act. Any change to that would have to be taken into consideration with the changes that were made to CEAA. To do that unilaterally with respect to this act without taking into consideration the changes that were made to CEAA to ensure that the triggers were reasonable would be a gross oversight.

Protecting the right to navigate waters in Canada has nothing to do with—nor should it have been, as I've just mentioned—a trigger for environmental assessment and the protection of the environment, which is already within the mandate of the federal government.

The federal government already has the Fisheries Act to protect fisheries and fish habitat; the Canadian Environmental Protection Act to protect water rights and land from the dumping of chemicals and other substances; the Species at Risk Act to protect threatened and endangered species; the Migratory Birds Convention Act for the protection of migratory birds; as well as a number of related regulations and policies specific to various industries, such as pulp and paper, mining and petroleum refining, and the protection of wetlands.

Furthermore, it is a little disingenuous on the part of motivated stakeholders to think that only the federal government protects the environment. Provinces, territories, aboriginal governments, and municipalities have a full suite of laws and regulations that also protect the environment.

With all that said, I come back to my basic premise. The Navigation Protection Act is about protecting the common law right to commercial navigation in Canada. It is not about environmental protection. As the minister himself stated in his appearance before you, “The purpose of the act is to balance the right of navigation with a need to construct infrastructure such as bridges and dams.”

Since it is our members who build those infrastructure assets, our work is often regulated under this act. Under the current system, proponents are able to self-assess, and since most of our products are designated works as defined by the minor works order, there is no need for Transport Canada to issue a permit. This clarity, certainty, and predictability is good for our industry.

I'll give you one example under the Fisheries Act. The Fisheries Act will issue guidelines as to how culverts and other structures need to be built over fish habitats. Knowing that in advance allows us to design and propose designs in construction with respect to those structures. It is a clear process. It can become a very timely process, because we can work that into our own designs.

Under the previous act, there was no ability to self-assess, so all decisions to proceed with construction required Transport Canada approval, and the attendant bureaucratic processes and delays, as you have heard from the other witnesses earlier today, happened in almost every case. They were the rule rather than the exception.

Furthermore, many of these assessments were only carried out after an environmental assessment approval had been completed and the project approved for development. If there's one thing we builders can't stand it's inconsistency; it's a green light turning amber going red. We want certainty, we want schedule, we want timeliness. The more the legislation and regulation can give us that, the better for all parties.

• (0950)

In summary, we would recommend, first, to keep Transport Canada's focus under this legislation on bodies of water most utilized for commercial and important recreational navigation.

Second, enhance the self-enhancement process by expanding the list of projects on the minor works order, providing design performance criteria that are clear. Many of these projects are perfunctory and should be able to proceed without any type of permitting circumstances.

Third, do not recommend the Navigation Protection Act be used as a means to trigger the Canadian Environmental Assessment Act because the protection of commercial navigation has nothing to do with protecting the environment, and the amendments to triggering CEAA 2012 using a list-based approach has massively improved the timeliness and certainty of federal environmental assessments. That goes back to my opening point that anything you were to do in that area with respect to this act must be considered in conjunction with the amendments that were made in the Canadian Environmental Assessment Act about the same time.

That concludes my remarks. I would be happy to take questions.

The Chair: Thank you very much, Mr. Atkinson.

Now we have Mr. Bloomer from the Canadian Energy Pipeline Association.

Welcome, and thank you very much for taking time to speak to us today.

Mr. Chris Bloomer (President and Chief Executive Officer, Canadian Energy Pipeline Association): Good morning, and thank you for the opportunity. I wish I were there. I'll be there next week, but couldn't make it today.

I'm going to speak on behalf of the Canadian Energy Pipeline Association. The association represents the 12 major energy pipelines crossing Canada. About 119,000 kilometres move 97% of Canada's oil and natural gas liquids energy.

I want to mention at the beginning that CEPA will be actively participating in all of the federal regulatory reviews under way, including the Fisheries Act, CEAA, and NEB modernization, but today I'll confine my comments to the review at hand, the Navigation Protection Act. First, there are some fundamental principles of good regulation that apply equally to all of those reviews and you will hear us talking about that in the months ahead.

The most effective and efficient regulatory framework for all stakeholders is one that is clear, efficient, and comprehensive. In particular, the process should be science and fact based, be conducted by the best-placed regulator, avoid duplication, outline clear accountabilities, contain transparent rules and processes, allow for meaningful participation of those who have valuable contributions to make, and balance the need for timeliness with other objectives. CEPA supports any efforts the government makes to achieve these outcomes. We are in the process of finalizing our written submission and technical background for this review, which we will be filing by the deadline next week.

My comments today will focus briefly on the purpose of the legislation, the changes made over the past few years that relate to our industry, and how these changes are working today.

Overall, the previous reforms were aimed at modernizing the legislation, reducing duplication and inefficiencies, and clarifying the purpose of the NWA, Navigable Waters Protection Act, relative to other legislation. With that in mind, the primary intent of the Navigation Protection Act is to ensure that navigation is protected and to balance navigation rights with the need to construct infrastructure.

The NPA is intended to provide oversight of works and undertakings that can interfere with navigation and its priority is to ensure that development can be done safely and with minimal impact on navigation. Other legislation that is also under review by parliamentary committees or expert panels, namely, CEEA 2012, the National Energy Board modernization, the Fisheries Act, consider the impact to habitat and the environment and how pipelines are regulated.

Given the broad mandate of other environmental legislation, we do not believe that environment protection has been watered down or impaired by changes in the NPA. Rather, the pipeline industry project reviews under other legislation, and particularly by the NEB, fully consider the environmental impact of pipelines crossing water bodies.

In addition, the changes implemented in 2012 reduce duplication and allow government, industry, and stakeholders to improve outcomes by focusing assessments on key areas of impact and allocating resources more efficiently. These changes have strengthened, focused, and clarified the purpose of the NPA and other environmental legislation and set the scene for enhanced environmental outcomes going forward.

We are hopeful that this review of the NPA will be mindful of not duplicating the regulations and protections available under other legislation. We are also hopeful that this review will look at the intent and purpose of the changes under the NPA, with a view to which changes are working and which require modification.

Before talking about these changes, I think it would be helpful to understand how pipelines cross watercourses. During construction, there are some, albeit often temporary, disturbances to the water body from both an environmental and navigation perspective. Sometimes it may be necessary to install a temporary bridge, culvert, ice, snow or log fill in the water to allow construction vehicles a safe

place to cross. These are fully removed after construction is complete.

Also, we would point out that CEPA members employ world-class watercourse crossing methodology that combines safety, engineering, and environmental expertise. We use the latest available technologies to minimize environmental impacts and, where necessary, employ mitigation measures that are grounded in science to address any remaining concern.

● (0955)

Importantly, for our purpose here, once the crossing is completed, things go back to normal in the watercourse, and there is generally no impact on navigation.

There are three key changes in the legislation that impact the pipeline industry.

The first is delegating authority to the NEB to assess impacts on navigation for federally regulated pipelines. These changes require the NEB to take into account effects on navigation and navigation safety before recommendations or decisions are made for new pipelines. Previously, this was the responsibility of Transport Canada post-NEB approval.

Second, narrowing the scope of the act from all waterways in Canada to a schedule covering 162 rivers, lakes, and oceans is important.

The third is the minor works order of 2009. Provincially regulated pipelines that are not regulated by the NEB are still subject to Transport Canada authorization if they cross a scheduled waterway. However, some of these crossings meet the minor works order criteria for pipelines, so they don't need a specific authorization.

We believe that these changes have had a positive impact, without watering down navigation protection or environmental protection.

Previously, there was duplication of authority, with the NEB having authority to regulate pipelines under the NEB Act, and the Minister of Transport having duplicate authority under the NWPA for water crossings. The 2012 changes consolidated that authority, with the NEB as a one window or best-placed regulator. CEPA believes this is a positive step that will create not only a more efficient permitting process, but also a better outcome by reinforcing accountability with a single regulator. It also builds on the industry's record of safety and performance in construction and operation of watercourse crossings. An integrated approach, taking into account the full range of safety and environmental concerns of a pipeline watercourse crossing, allows the industry and the regulator to work together more effectively to achieve the best results.

The NEB takes navigation and navigation safety into account with the same rigour as previously carried out by Transport Canada. The NEB conducts an independent, fair, and publicly accessible regulatory review process. It employs experts on staff who are familiar with pipeline construction and operation. They have the expertise to identify safety and environmental effects that are potentially significant. Although other federal government departments have specific expertise, none have experience related to pipelines.

• (1000)

The Chair: Mr. Bloomer, I don't want to cut you off, but you can get the balance of your comments in when you are answering questions from the members. They have many questions.

Mr. Chris Bloomer: Sure. Understood.

The Chair: Thank you very much.

Mr. Hardie, go ahead.

Mr. Ken Hardie: Thank you to the folks for being here.

I guess we'll start with you, Mr. Atkinson.

What we mentioned to the previous panel probably bears repeating, that my colleagues' standpoint on this review isn't necessarily to roll back everything that was done before; we don't want to throw out the baby with the bathwater. We have heard that there are some definite benefits resulting from the changes. What was missing from the previous process, in our view.... The way this was brought in, in the middle of a very large omnibus bill, involved very little consultation with proponents and opponents of the idea, so the purpose of this is basically a fair process, in order to give people a chance to tell us what they think and to get everything on the table so that we can go forward not just based on what we perceive to have happened—because the public communication that we heard after this was brought in tends to be quite different from the actual one that we've heard since having a chance to hear from people like you.

Mr. Atkinson, to what extent would you say the construction standards that your members follow remain influenced by the previous legislation?

Mr. Michael Atkinson: To a great degree.... I am talking about changes that were made not just to the NPA but to environmental assessment generally. A lot of those changes put back into play more certainty and predictability. For example, if a provincial highway—

Mr. Ken Hardie: I'm sorry, sir. You are going down the wrong road here.

I am talking about the construction standards they use. I'll be a bit more specific. A concern I would have is that.... Say you have a waterway that is now not listed, basically, not protected, to use that expression. Previously, there were some limitations, prohibitions about throwing stuff into the water, chunks of concrete, whatever, or depositing material, etc. Now, if that waterway is no longer protected in terms of the Navigable Waters Protection Act, does this happen?

Mr. Michael Atkinson: Dumping construction waste into a waterway would not be allowed under most of the standard specifications that we would see in a municipal or provincial project and would be covered by other legislation. Whether or not it was covered under the old legislation or the new legislation here, it would have been covered under other legislation or city bylaws, etc., because these would deal with the treatment of construction waste.

From that perspective, I wouldn't see any change in those standards as a result of changes to this act. This would be something that was a requirement in our contract specifications, which would be developed by the municipality or by the provincial owner requiring the work. As a matter of contract, we would be required to follow those specifications. In addition, there would likely be other either municipal bylaws or other provincial laws that would prevent it from happening.

• (1005)

Mr. Ken Hardie: Would the same apply to the pipeline industry, Mr. Bloomer?

Mr. Chris Bloomer: Of course. In this case we're talking about navigation. The pipeline industry is regulated under CEAA. It's continually inspected and managed. This in no way affects the protection or future impacts on the waterways, as it falls within the other environmental legislation.

Mr. Ken Hardie: I would say that in some quarters, not all, but in some quarters, there's deep suspicion about what you get when you have self-regulation and self-management of things. When we have the recreational users in to talk about any proposed changes to this act, what are they going to tell us about your performance out there under a self-regulatory regime?

Mr. Michael Atkinson: Well, it's not self-regulatory. As contractors or builders we're still required to follow the rules and regulations through other legislation, bylaws, regulations, and we're also required to perform the work in the standards that are specified by the municipality or by the province in the particular specifications related to that work. Noise, for example, dust emissions, many other items that come from construction, are all regulated in other forms, so it's not self-regulation. We still have to deal with standards, requirements, bylaws, regulations that are imposed by other pieces of legislation.

The Chair: Mr. Hardie, your time is up.

Ms. Block.

Mrs. Kelly Block: Madam Chair, quickly, before I ask my questions, I've been hearing some rumours that the Minister of Transport is going to be rolling out a transportation strategy over the next few months. Would you or perhaps the parliamentary secretary be able to provide us with a bit of an update at the end of this committee meeting?

The Chair: Possibly that could be done at our next committee meeting, but certainly not today, just because of the fact that we have our witnesses and we haven't allocated any time.

Mrs. Kelly Block: Okay. I was thinking about at the very end.

We know that the minister has the ability to both add or remove waterways under subsection 29(2) of the act. We heard from departmental officials and municipalities that there have only been two requests to add waterways and that to the best of their knowledge, there have been no complaints filed in Quebec, Alberta, and Saskatchewan in regard to projects undertaken. If you look at the act, you know that it's not just municipalities and provinces that could ask for a waterway to be added, but first nations would be included in that as well.

I really appreciate the clarity, Mr. Atkinson, that you have provided with respect to the focus of the Navigation Protection Act, and the reminder that there are other pieces of legislation that speak to some of the concerns that were raised by different groups at the time the Navigable Waters Protection Act was changed.

We've heard a lot from members across the way that perhaps they're not really focusing on the legislation but more on the process that was undertaken. I know that we have another panel coming next week, which I think is largely environmental groups—interestingly enough, given your observations, coming to speak to the Navigation Protection Act.

I also want to follow up, Mr. Bloomer, with some questions that my colleague asked of the municipalities about the change, in respect to pipelines under the Navigation Protection Act, over to the NEB. I believe that was done through Bill C-46, the Pipeline Safety Act. I wonder whether you can speak to that.

Then I have perhaps two questions. Do these changes in any way reduce the environmental oversight of projects? How has commercial navigation been affected by the changes that were made?

• (1010)

The Chair: Mr. Bloomer, would you like to respond?

Mr. Chris Bloomer: Thank you.

The move to the NEB, as I said in my statement, was basically... Before, the transportation board would opine on navigation aspects after the NEB; now, it's incorporated in the whole process, and the navigation piece is taken as seriously with the NEB, as probably the best-placed regulator to do that and more efficient.

I think that was the key thing, to move it to where the science and technical expertise was, to make it more [*Inaudible—Editor*] and incorporate it into the overall process.

With respect to reducing protections and so on, under CEAA 2012 those protections in the Fisheries Act and so on are still there; it

didn't diminish the protections at all, as this is focused strictly on navigation.

If there's any impact on navigation, there has not been any impact due to the changes on any kind of navigational aspects of pipeline projects.

Mrs. Kelly Block: Thank you.

Mr. Atkinson.

Mr. Michael Atkinson: As I understand it, some of the concern is with the automatic trigger for an assessment based on a navigable water. Part of the whole reform with respect to CEAA was to look at some of those triggers and to make sure that we didn't have a duplication. If the provincial government, for example, has already done an environmental assessment, why does it have to be assessed again federally just because somebody has floated an idea and thinks a drainage ditch is navigable? It just didn't make a lot of sense.

With respect to what the impacts have been on commercial navigation, we certainly aren't aware of any problems or concerns with structures being constructed on navigable waters that have changed or made them different in any way from the previous legislation.

The Chair: You have half a minute left.

Mrs. Kelly Block: I'm going to take this half a minute to summarize what I see the issue as being. I appreciate my colleagues' comments. I believe each one of them is genuine in their attempts to understand the Navigation Protection Act and what led us up to the changes that were made in 2012.

I guess I would suggest, as my colleague has formerly, that we're studying this because it's in the minister's mandate letter to restore the protections that were removed by the previous government. I think that has been our biggest concern. The conclusions, what this committee may choose to recommend, may not even be considered, because there's a foregone conclusion about what needs to happen, which is why we have opposed this study right from the beginning.

I appreciate so much the clarity that you've brought today.

The Chair: Thank you very much.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

Gentlemen, thank you for being here this morning. Your expertise is appreciated.

Without further ado, I'll turn to Mr. Bloomer.

As an overview, could you provide us with an estimate, even a rough one, of the number of Canadian navigable waterways where pipelines cross, either in or under the bodies of water?

[*English*]

Mr. Chris Bloomer: Do you mean the absolute number of the pipeline crossings? Well, there are probably hundreds if not thousands of different water crossings and so on. Different techniques are used for each crossing, depending on the size. Directional drilling is a key thing, whereby we don't affect the bed at all, but there are quite a number, obviously.

[Translation]

Mr. Robert Aubin: Thank you.

What advantage do you see in the transfer of assessments from Transport Canada to the National Energy Board?

Are the assessments simpler, more effective?

Could you give us one or two examples that would enable us to compare the new system with the old one?

• (1015)

[English]

Mr. Chris Bloomer: I think the whole purpose of making the change was to make it less cumbersome, put it in a place where you had the technical capability within the NEB, to make sure that the process was not creating redundancies in evaluations, and so on. As I said, before, the transportation board would provide their opinion post the NEB's opinion. Now, it's incorporated into the process, and the same considerations are in the NEB process as were in the previous process.

In the past, as Mr. Atkinson mentioned, it was the triggers that really created the issue. By defining in a schedule the types of water bodies that are included in the assessments I think greatly indicates where the issues should be focused.

In some cases, where you had small ephemeral waterways, ephemeral ponds, and so on, it was an automatic trigger that created a tremendous amount of regulatory burden to deal with those things. It really wasn't dealing with navigation per se, and it was not really dealing with how the pipelines affect those areas.

[Translation]

Mr. Robert Aubin: Now that the entire environmental study process falls under the National Energy Board, can you tell whether it has helped achieve the much sought-after social licence that is essential now that the time has come to carry out major infrastructure projects such as yours?

[English]

Mr. Chris Bloomer: I think we have to put the pipeline piece into context. There is the project approval piece. A lot of discussions are happening around that right now, obviously. Then there's the life cycle aspect of it. The NEB, having the environmental reviews within the regulator, has the technical expertise to deal with it, and they also manage the pipeline throughout its life cycle after it's built. Rather than having it spread out in competing jurisdictions, it's in one spot where you have the best technical expertise that manages it throughout the life of the pipeline.

The Chair: Thank you very much.

I'm sorry, Mr. Aubin, your time is up.

Mr. Rayes.

[Translation]

Mr. Alain Rayes: Thank you, Madam Chair.

My thanks to both witnesses for being here today.

In a previous life, before I was elected to Parliament a year ago, I was the mayor of a municipality of 45,000 residents.

Mr. Atkinson, I confirm that there are many bylaws, many environmental regulations—particularly at the provincial level—that stand in the way of people who want to create wealth and to develop the various municipalities across Canada.

In any case, I can confirm that this is the reality in rural areas. It often causes more problems than anything else. As mayor, I had to play the role of mediator, to deal with provincial authorities to try to untangle projects that were subject to excessive regulations for all sorts of reasons. I could prepare a whole list, but I don't think this is the objective today. For anyone wondering, I confirm that there are a lot of them.

Let me ask you both some simple questions.

First of all, on a scale of one to 10, what is your level of satisfaction with the existing legislation and with the amendments that were implemented in 2012?

[English]

Mr. Michael Atkinson: As far as bringing certainty and predictability and timeliness is concerned, it's at seven, eight, or nine, but the truth will tell. We haven't had enough real experience with the changes, but certainly the intent to ensure that is so important.

We are not the proponents of these projects. We're the builders. When we get the green light, assuming the environmental assessment has been properly done and scrutiny with all the regulations, etc., being contractors we want to go from A to B as fast as possible and get the project done in the quality and time and budget that the proponent has asked for.

The worst case is that we start with a bunch of uncertainty hanging over us. The chance that the project could be stopped or delayed because of a challenge based on, "Oh, there should have been another assessment" or "This has been triggered now" frankly was our biggest concern.

It appears to me that the changes that were made with respect to this legislation would diminish that probability substantially, from a builder's perspective.

Frankly, under the old regime the definition of navigable water was anything you could float an opinion on. That was the uncertainty we would often start projects with which had already received environmental assessments. They would have started it, and somebody would have said, "Wait a minute; that's navigable", even though it might be a dry drainage ditch in July and August. That was the problem we the builders had: the lack of certainty, the lack of knowing that we had now received the green light to proceed and could now proceed.

• (1020)

Mr. Chris Bloomer: I would echo those comments. I would say that the principles that underlie the objectives of CEAA 2012, and certainly the changes to the Navigable Waters Protection Act, of certainty, clarity, and reducing duplication in the process are still valid today. While nothing is perfect, I think that proceeding with the way things were thought of in 2012 is the corporate way to go.

[Translation]

Mr. Alain Rayes: Great.

My understanding is that—just answer yes or no, unless you want to elaborate—the minister's mandate letter is quite clear. He wants us to go back, despite what has been said in terms of not “throwing out the baby with the bathwater.” From the minister's various comments, we feel that the Liberals want to destroy what was done by the previous government. Do you think we should go back, before 2012?

[English]

Mr. Michael Atkinson: I would not want to see a return to a system that had uncertainty and the ability for a project that had already received the green light to be derailed because somebody floated an opinion.

[Translation]

Mr. Alain Rayes: Great.

[English]

Mr. Chris Bloomer: I think we are now in a process wherein we have an NEB modernization review, a review of CEAA, fisheries, and navigation. Those processes are under way right now. We're obviously going to participate in those things. As I said before, we're going to reinforce in our views that the principles of CEAA 2012 are still very valid and positive.

[Translation]

Mr. Alain Rayes: Thank you.

I'll give the 50 seconds I have left to my colleague.

[English]

The Chair: You have 45 seconds.

[Translation]

Mr. Luc Berthold: Thank you very much, Madam Chair.

Given the testimony, given the minister's mandate letter that is very clear on the expected outcome, given the letter to the committee in which the minister had promised to hold consultations—and we have learned that there will not be any—given his testimony before us, I move the following motion, Madam Chair:

Whereas the minister of Transport has already decided the changes to be made to the Navigation Protection Act and following the hearing of the Canadian Energy Pipeline Association and the Canadian Construction Association.

I ask that the Committee suspend the study until the minister of Transport submits his own modifications to the Navigation Protection Act to this Committee.

I'm submitting a copy of that motion to the clerk. Thank you very much.

[English]

The Chair: I think we've all heard it.

What are the wishes of the committee? It's 48 hours' notice that is required.

It looks as though this will be a continuation filing.

Mr. Sean Fraser: Madam Chair, I think, given that we have witnesses here and still have time to ask questions, if we could defer this and deal with it more than 48 hours from now, that would be my preference.

The Chair: There's no consent.

Mr. Fraser, go ahead.

Mr. Sean Fraser: Thank you very much to our witnesses. I did appreciate your testimony here today.

To provide a bit of context, there was some discussion about this potentially being more about process than substance. I appreciate my colleague, Ms. Block's, comments that she is taking this as being genuine.

I have to say, though, I have some problems with the legislation itself. There's no preordained outcome, but I don't expect my feedback will be offensive to you. I'm not here to conflate navigation concerns with the need to conduct environmental assessments on drainage ditches. When we say there were some good things in there, I don't think anybody should have to pay hundreds of thousands of dollars to hire environmental consultants because it rained too hard one Tuesday. That's not what this is about to me. Perhaps it's my own lived experience that has informed my opinion.

My concerns with the revisions to the act are primarily economic. I'm worried that we've shrunk down the number of scheduled waters significantly. There's some good and bad in there. My real concern is that it's going to interfere with marine tourism and trade on significant, but not necessarily large from a national perspective, rivers and streams that actually serve the economic purposes of the people and businesses in my own community. I also come from a litigation background. Before my career in politics, I usually got involved in projects when somebody didn't do what they were supposed to do.

I'll start by dealing with some of the obstructions that could land on what was previously navigable water, but is no longer scheduled. From the pipeline industry, we heard that the typical practice is that if you have to erect a temporary bridge or some infrastructure to allow you to complete your project, it's removed.

If you're dealing with an unscheduled water, do you think the minister should have some power to enforce the behaviour of somebody who is constructing a pipeline, but doesn't do what is supposed to be done? What should the government's role be when saying that the obstruction has to be removed?

• (1025)

Mr. Chris Bloomer: Are you asking if the pipeline company leaves stuff in the waterway?

Mr. Sean Fraser: The company or one of its subcontractors. Is this regulated elsewhere?

Mr. Chris Bloomer: Under the NEB, there's a leave to construct, and then there's a leave to operate. Once the pipeline is constructed, the NEB will review everything. If that's not taken care of, they won't be able to operate the pipeline or start it up. There is a very strict process for dealing with those things and to make sure all those things are done. After construction, the NEB will say, “Well, you didn't do this, you didn't do that.” If that's the case, then they have to do it before they start up. It's very well scrutinized.

Mr. Sean Fraser: Sure.

From the construction industry, we started to go down this path a little bit, but more in the context of construction standards. Let's forget standards for the moment and just think that sometimes there may be a naughty subcontractor out there who leaves materials in the waterway. If we're dealing with perhaps a strategically important river for an exporter, is there authority that already exists, or is there authority that should exist, so the minister or the government could help ensure that there's commercial access to these waterways?

Mr. Michael Atkinson: If we're working for a municipal owner, absolutely. There is a lot of leverage in the construction contract itself that can be brought to bear to ensure that proper construction methodology and standards are complied with. I don't think we need a federal piece of legislation to ensure that that happens with respect to bodies of water that are important to other levels of government.

Right now, that's the case for any earthmoving as well that's related to a riverbank or for highway or road construction. Those regulations, standards, requirements, etc. are very much standard in the construction contracts and specifications that a municipality or a provincial government would have in those circumstances.

Mr. Sean Fraser: You mentioned a municipal owner. Do you mean of the project or of the waterway?

Mr. Michael Atkinson: Both. They may have governing jurisdiction, or they may have ownership of the project.

Mr. Sean Fraser: Sure.

If we're dealing with a private owner, does your answer differ?

Mr. Michael Atkinson: No. In most of those situations the private owner is going to have to get some kind of authority from the municipality to construct whatever they're constructing, and the municipality has the ability to enforce strict adherence to construction performance through that measure. You wouldn't need a piece of legislation at the federal level to do that.

Mr. Sean Fraser: Are there local practices everywhere that require you to factor in that navigation on...not drainage ditches, but streams, lakes, rivers when you're doing the design phase of a construction or pipeline project?

Maybe deal with construction first.

•(1030)

Mr. Michael Atkinson: The design in most cases is very much directed or regulated by the owner—whoever we're building for. If it's a private owner, then they have to get a building permit or some other kind of permit in order to proceed with that construction. They would have to have submitted their design, and if their design is lacking in achieving the standards you've just spoken about—respecting other property rights, respecting navigation, etc.—they won't get the permit.

Mr. Sean Fraser: Do you mean from the municipal body?

Mr. Michael Atkinson: Right.

The Chair: Thank you, Mr. Fraser. Your time is up.

Monsieur Aubin.

[Translation]

Mr. Robert Aubin: Thank you, Madam Chair.

I would like to quickly go back to Mr. Bloomer's statement in response to one of the last questions. He said that the National Energy Board process had already been modernized.

Could you elaborate on the modernization of the National Energy Board?

[English]

Mr. Chris Bloomer: Maybe I misspoke. I didn't say that the modernization.... I think with CEAA 2012.... That was a step forward.

Mr. Luc Berthold: I have a point of order, Madam Chair.

[Translation]

The modernization of the National Energy Board Act is not on the agenda. I don't understand the point of my colleague's question.

[English]

The Chair: It's Mr. Aubin's time, and if that's how he wants to use it, to focus on this, I think it's his right to do that.

Please go ahead.

[Translation]

Mr. Robert Aubin: Thank you.

However, the answer is very simple, Madam Chair. We are studying a piece of legislation that initially covered the pipeline work. Now, that's no longer the case. I guess that modernization could also mean that we can go back to it someday, if it is the best solution. I think it's quite relevant.

Mr. Bloomer, let me go back to the principle of modernization of the National Energy Board, because, first, you're talking about 2012, which I understand. However, to talk about the elephant in the room, we have a situation—such as with one of the largest projects, Energy East, not to mention any names—in which, for now, the National Energy Board does not seem to have the credibility needed to move the matter forward and enable all citizens to express themselves clearly and precisely to achieve social licence.

Would it not be more objective to refer this matter to Transport Canada, or do you really think the National Energy Board can modernize its way of doing things to accommodate the wishes of the public?

[English]

Mr. Chris Bloomer: Well, I think the Navigation Protection Act covers the whole aspect of what we're talking about here in terms of energy east or any other new project. I think the NEB...there is a process under way now to have...there is a panel around energy modernization, and those discussions will be had. The NEB has addressed and the government has addressed the consultation issue through the additional consultations on both Kinder Morgan and energy east. Many of those issues are being dealt with, and we'll see the results of the current government processes to deal with them and will participate in that process fully.

[Translation]

Mr. Robert Aubin: Thank you.

I have a question for Mr. Atkinson.

[English]

The Chair: Keep it very short, Mr. Aubin.

[Translation]

Mr. Robert Aubin: Okay.

Do provincial or municipal standards for environmental assessment seem higher or more restrictive than in the Navigation Protection Act?

[English]

Mr. Michael Atkinson: My experience and the information I get back from our members is that it's just as diligent, just as vigilant at the provincial level. This is one of the reasons why triggering so many federal reviews under CEAA was really a questionable practice, because since the introduction of CEAA, most if not all provinces have entered into environmental assessment processes themselves. To actually duplicate those processes was a complete waste of time. It had nothing to do with protecting the environment. It was just introducing red tape and uncertainties into the program.

I can tell you that I hear quite a bit from our members. Our members don't go through the process—it's the proponents who go through the process—but they hear from the proponents that the rigour that's used at the provincial level...it's not an easy path for the proponents. Let me put it that way.

•(1035)

The Chair: Thank you very much.

Mr. Sikand.

Mr. Gagan Sikand: I'm sharing Mr. Iacono's time, and so, gentlemen, if you could keep your answers brief, I'd appreciate it.

Starting with Mr. Atkinson, could you speak to the utility of the opting-in scheme or measure?

Mr. Michael Atkinson: That's something for the proponents. We wouldn't ourselves be involved in that, since we're just the builders. That's something the proponents would have to consider: whether it's in their best interests or not. I can't really speak for the proponents. I only represent the builders.

Mr. Gagan Sikand: Okay, that's fair enough.

Mr. Bloomer.

Mr. Chris Bloomer: I apologize; I didn't hear the question.

Mr. Gagan Sikand: I was asking for your thoughts on the opting-in scheme.

Mr. Chris Bloomer: You mean the opt-in or opt-out?

Mr. Gagan Sikand: Yes.

Mr. Chris Bloomer: I think the scheduling piece provides the opportunity to be able to identify, if a water body does come up...to be either opting into the process or opting out. That's a decision that can be brought forward at the time, and the legislation accommodates for that.

Mr. Gagan Sikand: Okay, that's fair enough.

The Chair: Mr. Iacono.

[Translation]

Mr. Angelo Iacono: Thank you, Madam Chair.

I just want to make a clarification for my colleagues opposite.

We often hear that we Liberals want to change and destroy what was done by the previous government, but that is not the case. On a number of occasions, we have said that we just wanted to make sure that the changes that were made without prior consultation—let me stress that—are effective and meet the needs of Canadians. I don't understand what is so difficult to grasp about that.

This is a transparent and honest process to gather the views of different organizations. You can see that we have asked questions and the organizations responded today. We are here to hear from witnesses, not to introduce partisan motions that slow down our work.

I'm sorry, but I just had to say that.

Let's now move to my question. In your opinion, would it be possible to improve the process of adding waterways to a schedule without undermining the certainty you have mentioned and without affecting the speed of the approval process?

[English]

Mr. Michael Atkinson: Again, from my perspective, that's a question that's more appropriately put to the proponents of the projects. I have seen some reports that suggest to me that in cases in which some projects have some sensitivity, some provinces or some proponents are looking at perhaps opting in simply because of that aspect. Again, that's a question more appropriate for the proponents.

[Translation]

Mr. Angelo Iacono: Thank you.

[English]

Mr. Chris Bloomer: I think the provision to add water bodies is again in the legislation. I think that provision can be enacted to add water bodies, if it's deemed necessary, and there's a process and there will be principles that apply to that. I think it's on a case-by-case basis, and I think that's probably the best way to deal with it.

Mr. Angelo Iacono: Thank you.

Do I have any more time, Madam Chair?

The Chair: Yes, you have two minutes left.

Mr. Angelo Iacono: I'll share my time with my friend Ken Hardie.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Thank you very much.

We heard the word “conflate” brought into this conversation, and it's very difficult not to do that in some cases. Because I'm also on the fisheries and oceans committee, the whole issue of environmental protection obviously comes into my thinking. But I guess the question is, has anybody actually ever done a graphic that layers the federal, provincial, and municipal requirements so as to give anybody a really clear picture of the hoops that either a proponent or the builder has to clear, even under today's more open standards?

•(1040)

Mr. Michael Atkinson: I'm not aware of one. I would be deathly scared of one, in that we wouldn't get any building done if people saw all the different hoops, etc., that we had to go through.

No, I'm not aware of anybody doing that. I can tell you, though, that contractors generally have a very good understanding of local requirements and of what's required in their local municipal jurisdiction, regional municipality, etc., and how provincial and federal legislation may well impact those requirements. The building community become very aware of that and of what needs to be done. The more proactive a regulatory authority is in saying, "Here's the standard you have to meet; here's what you have to do" and—my earlier example with DFO—in providing a guideline that says, "If it's a fish habitat, your culvert had better look like this".... That is extremely helpful.

Mr. Ken Hardie: Perhaps I could interject right now.

If you had to choose between dealing with the current regime of regulatory frameworks between municipalities, between provinces, versus having a standard Canada-wide framework administered by the federal government, would the latter improve things? Do you see, for instance, marked differences between jurisdictions?

Mr. Michael Atkinson: That's a tough question to answer with one straightforward answer. In general application, it changes. I guess the more uniform regulation and legislation is, the easier it should be, you would think, but 99% of our members are SMEs and often don't work much beyond their local jurisdiction or area and so would not necessarily run up against the differing or varying jurisdictions.

Mr. Ken Hardie: Maybe I could ask the same question of Mr. Bloomer.

Mr. Chris Bloomer: Well, the pipelines that CEPA represents are all NEB-regulated, so there is regulation across the country. The provinces have their own regulatory framework, and it's pretty straightforward. Within the provinces, if there's a designated body, it would trigger a review. Having the designated water through the Navigable Waters Protection Act would trigger that. I think it's pretty

clear, and the way the process is now is fairly direct. It's easy to examine, and I think that the provincial regulations and the federal regulations overall are similar, and the way the process is structured now is fairly efficient.

Mr. Ken Hardie: Thank you.

Do I have any time left?

The Chair: You have time for one more question.

Mr. Ken Hardie: I actually want to close with a comment. One of the things we look at on the fisheries and oceans committee is something that the DFO operates under. It's called the precautionary principle: basically, use caution when approaching something, or as we used to say in the communications business, "When in doubt, leave it out".

My comment to you is that you probably do this as a result of the influence of the old regime and the old legislation, but as you go forward, use that precautionary principle. If you have an option not to obstruct a waterway, even though you may be allowed to, don't, because one of the things you'll be continuously challenged to do is to trade minds with the people who are very suspicious of what you're up to or don't trust your motives or trust your processes. To the degree to which you can say we operate according to this principle, everybody will be better off, and the heavy hand of government will be avoided.

The Chair: Thank you very much, Mr. Hardie.

To our witnesses, thank you very much for participating today. We look forward to staying in touch with you as we complete this review.

Thank you very much.

The meeting is adjourned.

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