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Chair

The Honourable Judy A. Sgro

Standing Committee on Transport, Infrastructure and Communities

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• (1620)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call to order the 84th meeting of the Standing Committee on Transport, Infrastructure and Communities of the 42nd Parliament.

We have before us, pursuant to the order of reference of Wednesday, October 4, 2017, Bill C-48, an act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

As witnesses today, from the Department of Transport, we have Natasha Rascanin, Jennifer Saxe, Emilie Gelinan and Joseph Melaschenko.

We will do clause-by-clause consideration.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

(On clause 2)

We have amendment NDP-1.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair.

We only have a certain number of amendments that we deem to be important on Bill C-48. I know that my colleague, Madam May, has some, and I think there might be one from the Liberals as well.

First of all, part of our amendments came directly from witness testimony that we heard at committee in reviewing Bill C-48, the north coast tanker ban. Part of it is also informed by the more than 10-year-long campaign that has been sought in the riding I represent in northwestern British Columbia, where most of this bill applies, in consultation with first nations leaders, environmental organizers and everyday citizens who have been concerned about the threat of tanker traffic on the north coast.

Amendment NDP-1 adds refined oil products to the ban. The nature of what can and cannot be shipped is at the heart of what any tanker moratorium would be. When you get into the specifics over the various materials that are shipped around the world today, you can get into the weeds a bit, if you will, Madam Chair, but we wanted to prevent refined oil spills because we have seen what those incidents can look like.

If you'll recall, colleagues, there was the *Nathan E. Stewart* incident, the tugboat that ran aground and sank near Bella Bella just about a year ago. There was a recent incident just in the news this weekend. The spills of those refined products, according to many experts who work in the field, can be just as bad or even sometimes worse than what's contemplated under Bill C-48.

We have other subsequent amendments to include this that would make the bill whole if amendment NDP-1 were to pass.

I look forward to my colleagues' interventions and support on the amendment.

The Chair: I'd like to ask the department if they wish to comment on the implications of amendment NDP-1.

Ms. Natasha Rascanin (Assistant Deputy Minister, Transformation, Department of Transport): Thank you, Madam Chair.

I would like to simply resume once again that the legislation as it stands provides an unprecedented level of environmental protection and is unique, the first of its kind in the world. It's a precautionary approach targeting crude and persistent oils and using international and science-based definitions for those oils. The coverage of the legislation is consistent with those international and science-based definitions.

The Chair: Is there any further comment or discussion on amendment NDP-1?

Mr. Cullen.

Mr. Nathan Cullen: Chair, briefly, if I hear Ms. Rascanin's comments, to make the promise made in the first part of our officials' comment and the government's and the Prime Minister's public declarations true, we believe that the enhancement to this bill of adding refined oil products to the ban would do this.

Also, just for those concerned, as we've had some testimony on this around the potential of LNG development and other proposals that exist on the north coast and other places, clearly this amendment would not affect those proposals and those proponents have been made aware of that. I think the government officials would confirm that amendment NDP-1 wouldn't affect liquefied natural gas and other proposals that are currently being contemplated with first nations involvement.

• (1625)

The Chair: Not seeing any further discussion, I call the question on amendment NDP-1.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 2 agreed to)

The Chair: On amendment NDP-2, a proposed new clause, Mr. Cullen.

Mr. Nathan Cullen: This is also quite pertinent because of the recent events facing the Heiltsuk Nation this past weekend. This clause seeks to provide an enhancement of oil spill response recovery on the northwest coast.

If colleagues will recall, just yesterday I was up in the House questioning Minister Garneau about the proposal from the Heiltsuk community, the same community that's facing the threat from the *Nathan E. Stewart* and the recent incident this past Sunday, which is that the ability to actually enforce a moratorium and the ability to properly respond to large events, but also to some of the smaller-scale events, are directly correlated to the ability of the government to physically put materials into the environment. These are booms. These are tug responses. These are the various things that the communities of the Heiltsuk, the Haida, and the coast in general have been calling for.

About a year ago, the government announced its coastal strategy. It's been a year since then and there has not been as much activity on the ground and on the water as people would have liked to see. This is simply an enhancement to the legislation to ensure that there is an improvement to the oil spill response on the northwest coast of British Columbia.

The Chair: Department officials, would you like to comment?

Ms. Natasha Rascenin: I will just add that the purpose of the legislation is outlined in the title of the bill, and the proposed amendment does not reflect the policy intent of the moratorium. Certainly, the marine safety elements and the spill prevention and response capacity are being addressed through the oceans protection plan.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Here's what I'm understanding. If a clause like this proposed new clause 2.1 says it's "to encourage and improve oil spill prevention and response on the north coast of British Columbia", does that contravene the intention of Bill C-48? Does it work against the act as a moratorium on the usage and passage of large marine vessels?

Essentially, Chair, I'm wondering if it's harmful. Sometimes we have additive amendments, and this is deemed in order, so it's not outside the scope of the bill. I understand the central intent of the bill, but if new clause 2.1 doesn't work against that intent and only enhances, then I'm wondering what the specific concern might be from our officials or from government members, if they're planning, as I suspect, to vote against it.

Ms. Natasha Rascenin: I do think there is a scope element here that we are looking at, and the title of the legislation very clearly defines what is the intent of it.

The Chair: Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Madam Chair, the problem I have with the amendment is that the bill as written really doesn't get into protecting the ocean. There are no measures and no provisions that sort of leap out and say that as a result of this

moratorium, thus and so is going to happen with respect to protecting the oceans.

With that material being more or less absent in here, this does seem out of place, and particularly as was mentioned with, if you like, the complementary activities of the oceans protection plan.

The Chair: We have Mr. Fraser, and then Mr. Cullen.

Mr. Sean Fraser (Central Nova, Lib.): I certainly thank Mr. Cullen for raising this.

To build on Mr. Hardie's comments, one of my concerns is that if we start outlining what the purpose is.... I think this is part of a larger piece to try to improve spill response and prevention, but if we say the purpose of this legislation is to achieve that, there are a number of other measures not included in this bill, specifically around cleanup, which I think would not be properly reflected if we actually said the purpose of this is to improve—I forget the precise language you've used—oil spill prevention and response.

To me, if we said that this is the purpose, we might communicate to Canadians that this legislation doesn't actually achieve its intended purpose, because to achieve what you've stated the purpose maybe should be isn't actually accomplished, in my mind, by what this legislation is, notwithstanding that I still support the legislation.

• (1630)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: While understanding my colleague's point, this bill is explicitly and nominally to protect the coastal waters of British Columbia. That's the idea. You wouldn't invoke a moratorium on a certain transport of goods.... Well, you could, for other reasons, but my assumption all along has been that the reason we're banning and seeking to have a moratorium on these products moving in this way on the coast is the risk that's posed. This is the Prime Minister's declaration. This is the statement that I take at virtue.

If colleagues will also cast forward, we have some amendments that would lower the threshold of certain sizes of vessels that are also going to be permitted under this. This hangs with the idea of why we're doing this in the first place. Oil spills will continue to happen even with the passage of Bill C-48. I feel pretty confident in saying that, because whatever size of vessel is going to be allowed to go through.... We've seen it just this weekend. We saw it almost a year ago to the day this weekend. Spills will continue.

Even if Bill C-48 had been in place, these tankers—smaller tankers, barges—that move through the area will continue, so again, having spill response, it seems to me, is not harmful to the prospects of this legislation. It can do no harm, so why vote against it? That's essentially my argument.

The Chair: Thank you, Mr. Cullen.

Are there any further questions or discussion?

Mr. Nathan Cullen: I wouldn't mind a recorded vote on this one, Madam Chair.

(Amendment negated: nays 8; yeas 2)

(Clause 3 agreed to)

(On clause 4)

The Chair: Amendment NDP-3 is inadmissible given the fact that under *House of Commons Procedure and Practice*, Second Edition:

An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

It is my opinion as the chair that the scope of the bill as agreed at second reading is limited to heavy products that break up and precipitate slowly when spilled. Therefore, I rule the amendment inadmissible.

Mr. Nathan Cullen: Can I have some clarification, Chair, through you to the legislative clerk? It's more for my own edification and an understanding of why amendment NDP-1 was admissible but NDP-3 is not. They both deal with the notion of refined oil products that are not included in Bill C-48. We had deemed these both admissible simply because they were adding a category of products that were contemplated but were simply omitted from the bill.

The Chair: The scope of the bill...to "petroleum in any form", including "refined products"—

Mr. Nathan Cullen: Okay.

The Chair: —it broadens the scope considerably.

Mr. Nathan Cullen: Just so I can understand you, then, Chair, I'm not looking to belabour this point, but amendment NDP-1 was broadening the scope, but not so largely as to raise concerns. On amendment NDP-3, your ruling is that the scope was broadened too far?

The Chair: Yes.

Mr. Nathan Cullen: That's interesting. Okay.

The Chair: All right.

We'll go on to amendment PV-1.

Ms. May, would you like to speak to this?

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Madam Chair.

Forgive me, but I need to put on the record an objection to the process, to the fact that this committee passed a motion that deprives me of the right I would ordinarily have to present these amendments at report stage. I know that you individually did not intend to increase my workload, deprive me of my rights, and pass a motion that essentially requires me to be here, rather than giving me an opportunity, but I place my objection on the record and move to put forward the amendment, which is deemed to have been moved because I have no rights here, except for the motion you passed that makes me be here. I apologize for complaining about the nature of the manipulation.

The amendment I'm putting forward deals with the issue of the size of the vessel. You've certainly heard testimony from West Coast Environmental Law, Pacific Wild, the Sierra Club of British Columbia, the Union of British Columbia Indian Chiefs, and the Haida and the Heiltsuk nations, which have questioned the 12,500 metric ton threshold.

As you've just heard from our colleague, Nathan Cullen, that threshold is far larger than the spill that caused so much damage just recently, within the last year, the *Nathan E. Stewart* spill, which was a real threat to the Heiltsuk community and nation. Here, we're

looking at the evidence of Transport Canada's report that in order for vessels to provide resupply shipments to the north coast, 3,200 metric tons is an appropriate limit on the size of the vessel.

I do want to say, by the way, that overall, I welcome Bill C-48. To give just a tiny bit of history, this bill essentially does what we had in place since 1972 through a voluntary moratorium on the shipment on the north coast of B.C., which the federal government and the British Columbia government had accepted—until the recent Conservative government.

Legislating the north coast tanker ban is welcome. I'll make other efforts to expand it, but overall, I certainly welcome this piece of legislation. I would much prefer, as would the communities along the coast, to ensure that the allowable shipments are held to 3,200 metric tons in bulk. My amendment goes to every place where you see 12,500 metric tons and changes it in each location to 3,200 metric tons.

Thank you.

•(1635)

The Chair: Would the department like to comment on PV-1?

Ms. Natasha Rascanin: I'm pleased to say that the oil tanker moratorium was designed to not interfere and to in fact resupply communities and local industries in northern British Columbia, and, to minimize economic impacts on these communities and industries, critical access is needed. Based on significant engagement and based on a study that was just referred to, 12,500 metric tons is the appropriate threshold to not affect resupply at both the community and the industry levels.

The Chair: Thank you.

Mr. Cullen.

Mr. Nathan Cullen: To our department officials, while I don't claim expertise in the various sizes of ships, we checked, because we're talking predominantly about first nations communities, coastal communities, and their efforts to resupply. Some of them still run on diesel generation. We weren't able to find any communities that used vessels in excess of 3,200 metric tons; their resupply shipments came in vessels much smaller than that.

I'll have an amendment coming that's even more restrictive, but do you have any evidence of communities that use vessels on the scale of 12,500 metric tons? Many of these are communities of 100, 200, or 300 people. I've never heard of a vessel of that size coming in to resupply a coastal community like Hartley Bay. That would be extraordinarily large.

Ms. Natasha Rascanin: You're right. Some of the smaller communities do have smaller levels. For industry resupply, there are some larger ones.

Mr. Nathan Cullen: Okay. Then, if I may, Madam Chair, can department officials indicate—because I also know what most of the larger industries on the north coast are—which industries came forward that use vessels in excess of 3,200 metric tons for their resupply?

Ms. Jennifer Saxe (Director, International Marine Policy, Department of Transport): It's not a specific industry. There are a number of industries, as you know: aluminum, forestry, pulp and paper, and fishing. What happens is that they're small tankers, usually, that.... They range, but they're small tankers that will carry a mix of persistent and non-persistent oils. Based on a study and research on those volumes, as well as talking to those industries, it was deemed that the 12,500 metric tons was the appropriate....

Mr. Nathan Cullen: If I may, is that the study that Ms. May and Ms. Rascanin made—

Ms. Natasha Rascanin: It's the study that's public on the Transport Canada website.

Mr. Nathan Cullen: Yes, see, it's an interesting thing, because again, we looked around for....

Is it the same study, Ms. Saxe? Yes.

Now, there isn't pulp and paper anymore, so we looked around for industries that were calling for that specifically. We looked at Rio Tinto. We looked at the major likely folks, and we couldn't find anybody who said that they move shipments in.

Is it the mix of persistent and non-persistent that's the problem? We're only looking at and trying to limit one category and not the other.

• (1640)

Ms. Jennifer Saxe: That's correct. You can have a tanker with multiple holds. In several of the holds there will be non-persistent oil, whereas in other holds there will be persistent oil.

As to the maximum, while a tanker could hold, for example, 23,000 metric tons of oil, it may hold only 11,000 metric tons of persistent oil. Based on a study, and research and discussions with industry, as well as the more comprehensive study that we did, we arrived at the 12,500.

Mr. Nathan Cullen: The more comprehensive one is also the one that you, Ms. Rascanin, and—

Ms. Jennifer Saxe: It's what we have shared, as well as discussions. We did have, obviously, meetings and discussions with industry, and looked at evidence of actual shipments that have happened over the last five years.

Mr. Nathan Cullen: That's the one you've made public—

Ms. Jennifer Saxe: That's correct.

Mr. Nathan Cullen: —that more extensive study. Okay.

Thank you, Madam Chair.

The Chair: Mr. Sikand.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Thank you.

I certainly wouldn't accuse Ms. May of being Pollyanna, because the whole reason we're here is to actually protect the environment, but at the same time, we can't impede commerce.

To go to my question, is it reasonable to assume that the volume that's restricted could be increased once communities are more self-sufficient, perhaps when technology improves?

A voice: Reduced or increased?

Mr. Gagan Sikand: Increased.

At the moment, I can't see how....

We were given a reason as to why it's 12,500. Ms. May was asking for it to be extended to 3,200 metric tons—

A voice: Reduced.

Mr. Gagan Sikand: Reduced. Sorry. Right. I see what you're saying.

In the future, is it reasonable to see how it could be further reduced from 12,500?

Ms. Natasha Rascanin: I think if there were to be changes contemplated to this, it would have to be a legislative amendment based on the actual volumes being shipped at that time. Further study would have to be done to determine if that's reasonable.

The Chair: Is there any further comment or discussion?

Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Just for clarification from the department, is 12,500 metric tons around five million litres? Are those the numbers we're talking about?

Ms. Natasha Rascanin: I'm not sure I can answer that question readily.

My colleague may be able to pull out that number.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Oil is lighter than water, but that's water at 4°C.

• (1645)

The Chair: I think we have a tentative answer.

Go ahead.

Ms. Jennifer Saxe: Based on just a quick check here, it should be approximately 13 million to 14 million litres. The density varies on different products, but it should be approximately that.

The Chair: Thank you very much. We appreciate that fast math on the run.

Go ahead, Mr. Lobb.

Mr. Ben Lobb: We knew it was going to be a big number, so I'm just curious to know, from the study that you're citing, is the idea, then, that this vessel would fuel several communities in one trip, or is this from point to point? Are there communities that are actually requesting 14 million or 15 million litres at one time?

Ms. Natasha Rascanin: No, the threshold would limit the total on a vessel to 12,500 metric tons of the prohibited products, so the total amount of crude oil or persistent oil that is listed in the schedule could not be higher than 12,500 metric tons on a vessel .

There may be occasions on which communities are visited sequentially and the total amount of product drops off so that it diminishes, but at its starting point, wherever it lands first, it cannot exceed the threshold set in the legislation.

Mr. Ben Lobb: Okay, so in the studies you did, in a trip from point A to finish, what was the average size of shipments? Not just in one stop, but for what they would consider an entire trip, what would a good average be?

Ms. Natasha Rascanin: It depends. There are different types of ships that are used for various elements of community resupply and industry resupply, so it depends on the vessel. It depends on how many stops it has. It could be smaller. It could be up to 12,500 metric tons maximum.

Mr. Ben Lobb: Were there cases in your study in which 12,500 metric tons were delivered?

Ms. Natasha Rascanin: There were some with close to that, yes.

The Chair: Do you have any more questions, Mr. Lobb?

Mr. Ben Lobb: I do not at this time.

The Chair: I do not see any further questions or comments.

For the information of the committee, I will note that if we adopt amendment PV-1, amendment NDP-4 could not be moved as there would be a line conflict.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: On amendment NDP-4, go ahead, Mr. Cullen.

Mr. Nathan Cullen: I need to go back to some of my community leaders to find out who has received a ship with 13 million litres of anything on it. That's news to me. I'm trying to imagine the scenario.

Amendment NDP-4 is essentially the same in scope as Madam May's motion but slightly more restrictive.

Just to give people some context, for those who don't know, our restriction would still allow vessels four times the size of the *Nathan E. Stewart*, which sank off of Bella Bella. So for anybody worried about commerce and trade, you could run something four times the size of *Nathan E. Stewart*, which ran aground and caused trouble in Bella Bella, and still be under the limit we have set. The limit the government is proposing is six times more than that, which is a lot.

I can see the trend of things, Chair. It doesn't seem as though amendments have much of a life today, but I'll move it as is.

• (1650)

The Chair: Would the department like to comment on amendment NDP-4?

Ms. Natasha Rascanin: I think the conversation we just had covers that.

The Chair: That's fine.

Is there any further discussion or comment?

Mr. Hardie.

Mr. Ken Hardie: Just quickly, one of the issues that came up during the discussion when we were working through the bill with the witnesses was the matter of whether or not one ship could service a number of different communities on one trip rather than increase

the exposure and the risk by having too much back and forth, which was one of the rationales for even the 3,200-metric-ton limit. So to reduce that even further, my speculation at least is that you'd be increasing the number of longer-distance trips with this product on board, which would then only increase the risk of something happening.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: If I can respond briefly, these are the exact conversations I had with folks who live in those communities and run the power stations. They signed off on this proposal, so there isn't a notion even at 3,200 or 2,000 metric tons that it would require ships to go and come from port to service the mid-coast and north-coast communities. We checked that. The people who deal with these ships, and who have dealt with these ships for many years, were very comfortable with the amendments that we're moving. I'm talking about the Gitga'at in Hartley Bay, the Kitasoo, and the Haida. They all supported the amendments we put forward. I rely on the people who deal with these products. They would never seek to put their communities in any increased harm's way. They are supportive of the broad legislation. They just want to see it tightened up a bit because the loopholes are still too big.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: On amendment PV-2, Ms. May, would you like to speak to that?

Ms. Elizabeth May: Yes, I would.

I apologize to colleagues around the table. I'll be in and out due to the debates on Bill C-63.

I'll just say that the purpose of this amendment is to extend this moratorium to the whole coast of British Columbia, not just to the north coast. I'm expecting this to be ruled as being beyond the scope of the bill, but it was strongly recommended by the Union of British Columbia Indian Chiefs that this extend to all sensitive marine areas of our coastline. Therefore, in principle, I wanted to bring it forward and will accept the chair's ruling when it inevitably will come.

The Chair: Thank you very much, Ms. May. It's always a pleasure to have you here with us.

It is inadmissible, and I'll read out the rationale, as you've just said. Bill C-48 formalizes a crude oil tanker moratorium on the north coast of British Columbia. The amendment seeks to extend the application of the bill to the entire coast of British Columbia. It is my opinion, as chair, that the scope of the bill as agreed at second reading is limited to British Columbia's north coast. Therefore, the amendment is out of order. Consequential amendment PV-6 is also inadmissible.

(Clause 4 agreed to)

(Clause 5 agreed to)

(On clause 6)

The Chair: We have amendment NDP-5. Mr. Cullen.

Mr. Nathan Cullen: One of the concerns we raised with the minister and others is the notion of exemptions. In response to questions, it doesn't feel that there's a clear and public way in which exemptions for a moratorium not to apply have been described. The ministerial prerogative for this is very strong, and I would argue too strong, and the broad powers in the bill could be used in future.

Whenever governments design legislation, there's a tendency or a temptation to imagine that only the government that's designing the legislation will be applying the legislation, but of course, as we know when we write laws, various governments will apply them or not. The concern is not so much to try to discredit our good transport minister, who's doing a fine job, but to have this thing airtight. If we intend to have a moratorium, then have the moratorium, and do not allow for exemptions.

The one notion that was brought forward is about any sort of emergency such that we would want to exempt an oil tanker of some large scale beyond 12,500 metric tons. I can imagine no such emergency in which a community would suddenly cry out for a supertanker to come in the middle of the night and save them from anything. It's just not imaginable. It would actually be the opposite that we would worry about.

We want to limit those powers, not just of this minister, of course, but in the way the bill will apply in future.

• (1655)

The Chair: Department officials, would you like to comment?

Ms. Natasha Rascanin: I will simply say that exemption powers are commonly used across various legislation, and I'm certainly not aware of any abuses of them. We've tried to look at that. They are narrowly constrained. One of the examples we thought of—and I'll just give it back as a possibility—is that if there were an earthquake in Vancouver, at the port of Vancouver, and tankers trying to land there couldn't land, there could be an option to send a tanker to Prince Rupert, perhaps, if the scale of an earthquake were such that both Seattle and Vancouver were affected. That is a possible emergency example that one could conceive of.

Mr. Nathan Cullen: I understand the challenge in scenario-making. In that scenario there would be nowhere for the oil to go when it got to Prince Rupert, because there isn't a pipeline to take it anywhere.

It would be safe harbour—

Ms. Natasha Rascanin: Exactly.

Mr. Nathan Cullen: —transport, that type of thing. Alaska and San Francisco and Los Angeles would obviously be much better suited than would a port that can't handle a supertanker.

Just so committee members are aware, there are provisions in the act already that allow for national defence exemptions and other emergency exemptions. What we're concerned about is that the way the exemptions are written right now, there isn't public disclosure of those exemptions. They're not cited or gazetted.

I can give you a scenario in which a tanker is exempted and the reasons aren't made public or justified or don't need to be justified. The minister can simply, as the act is written right now, get

notification that a tanker would like to land and can exempt it. That's it.

That to me runs contrary to the spirit of what a north coast moratorium on supertankers would look like. Why use it if there are other aspects of the act that allow for national defence and emergency to override the moratorium in some sort of imagined crisis in which earthquakes and tsunamis have hit the west coast?

The Chair: Mr. Fraser, and then Mr. Hardie.

Mr. Sean Fraser: Thank you very much.

Just in response, I think you raised two separate issues in that last intervention, Nathan. The first deals with the appropriateness of an exemption at all. The second is about the lack of protections against misuse, and the possibility that it would be used in secret.

On the first one, I do accept that there are some possible circumstances in which a public interest exemption would be well placed. I appreciate that you likely disagree or consider that it's dealt with elsewhere in the legislation. I do have an issue with the current draft, and I do intend to move an amendment subsequently that hopefully will help quell the second concern.

I really do have some issues around the use of a public interest exemption with no transparency, and no release to the public on why you're doing it or the fact that you're doing it. I hope the amendment I propose will achieve this. In the general sense, I appreciate a public interest flexibility in a number of different pieces of legislation, so long as the public is aware that it is being exercised.

The Chair: Mr. Hardie.

Mr. Ken Hardie: In sidebar conversations, I too have expressed some reservations over this. Department staff, you mentioned that there's kind of a granularity in how the exemptions would be applied, but I don't see it here. I don't see it in the bill.

I understand it's a per ship exemption. Where is that? How can we, in the interest of transparency, really understand the metrics around the exemptions as they might be applied?

• (1700)

Ms. Natasha Rascanin: Right in clause 6 it's very clear that the minister “may, by order, exempt an identified oil tanker”. It is very clear in legal terms—and we have our lawyer here as well—that that's per vessel, so by individual vessel. The intent is that typically exemptions have to be documented, and if there ever were a legal challenge, the intent is that a particular vessel would meet the exemption test, which would be within the spirit of the legislation and would need to withstand court scrutiny. The exemptions are designed that way and are used legally that way.

Mr. Ken Hardie: Would there be complementary requirements for a ship that is given an exemption to be, I don't know, registered with the Coast Guard for passage or registered in, say, the port of Prince Rupert as a ship in port? Are there other things that would add to the level of transparency?

Ms. Natasha Rascanin: It is meant to be an exemption for unforeseen circumstances that need to be dealt with in the best interests of Canadians in a fairly quick manner, and so the clause as written specifies that the terms would be determined as appropriate based on the context. This is what that exemption power provides.

So the answer to your question is yes, but it would be context specific.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Amendment PV-3 is deemed moved by Ms. May.

Would anyone like to speak to amendment PV-3 on behalf of Ms. May?

Mr. Nathan Cullen: I truly would never endeavour to speak on behalf of Ms. May, other than to say that I think this falls into the same reference of conversation we just had.

The Chair: Yes. Thank you.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Next is amendment NDP-6. Mr. Cullen.

Mr. Nathan Cullen: This intends to shore up, if I can use that term, the government's assurances as to an exemption. We can imagine a scenario in which an exemption is made and a supertanker has been allowed through. This amendment would put a time limit on the exemption, so that there couldn't be a rolling.... Yes, it is shipped by ship, but if it's done in private, in secret, you can just start exempting ships. Again, this is not to cause discomfort for the current government, but one could imagine a moratorium that you could poke a hole through just by exempting a bunch of ships.

It would also, following the exemption, require a public review of the exemption, so that there would be a review of why it was done and if it met the test, rather than having to go through any legal proceeding where the concern often is that advice to a minister can be deemed non-admissible in court. If someone comes forward and gives advice to a transport minister in future and says, "We're exempting the following ships", we no longer have access to information over that advice that was given. It is very difficult, as has been proven many times, as the chair would know, to pull any of that evidence forward in a court of law because it is deemed a privilege of Parliament.

The Chair: Would the department like to comment?

Ms. Natasha Rascanin: I would add, consistent with the comments I just made, that the period for the application of the exemption would be specified—again, context specific.

The Chair: Mr. Fraser.

Mr. Sean Fraser: I'd like to speak to Mr. Cullen's comment. There's no offence taken about the reputation of one minister or another. In the long term, the potential harm I see with the misuse of the exemption power is that a minister 30 years from now may say that it's in the public interest to have crude shipments coming in and out purely because of the economics of it.

As for the circumstances in terms of the appropriate use of an exemption, I think that use would likely extend far beyond one month, if I'm talking about the kinds of circumstances where there is an earthquake, or a tsunami, or whatever it might be. I'm thinking

specifically of the Fukushima disaster in Japan. This is a multi-year thing. It's the timeline that I have some reservations about.

Although I appreciate the spirit of having it published in the *Canada Gazette*, I think that's helpful for people who watch the file very closely. I have two coasts in my own riding, and the spirit of this bill is very important to me. Nobody back home is watching the *Canada Gazette*, believe it or not. I think that if there were a broader exercise in publishing this on a more readily accessible source, it might be more appropriate.

I don't know if members have had the opportunity to look at the amendment that I intend to bring up to deal with this, but I hope it achieves the spirit of what Mr. Cullen is aiming at. I hope he appreciates that we're not just shooting this down for the sake of being difficult.

• (1705)

The Chair: Mr. Hardie.

Mr. Ken Hardie: I share the concerns about transparency. It's here where I personally would like to rely on the fact that there are many eyes on the coasts. There are many eyes in those communities. They will notice if something big is coming through, and coming through in a regular fashion. It will come to the notice of the public, the legislators, the media, etc. Yes, I would say that's probably more efficient and effective than putting something in the *Canada Gazette*.

The Chair: I see no further discussion.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Next is amendment NDP-7. Mr. Cullen.

Mr. Nathan Cullen: I'll speak to this quickly. My friend will be subbing for me in a moment.

I know that not everybody reads the *Canada Gazette*, which I see as shameful. I think it should be required reading.

Voices: Oh, oh!

Mr. Nathan Cullen: When I'm trying to put my seven-year-old twins to bed, I always give them the *Canada Gazette*, and it's amazing how it just knocks them right out.

This amendment is an effort at transparency. Again, once an exemption has been made, it would be put in the Statutory Instruments Act—that's the way we went through it this time—just to tell Canadians that it happened. I know that there may be many eyes on the coast and people are watching, but that's not the point, right? If the government is okay with making a decision, the government should also be okay with making that decision public. The vehicle we have, as uncaptivating as it is, is the *Canada Gazette*. That is the way the government tells the Canadian people that something has happened, such as orders in council and whatnot.

The Chair: Would the department have anything new to offer on amendment NDP-7?

Ms. Natasha Rascanin: I would just add a clarification that the Statutory Instruments Act is deemed not to apply in this legislation because its requirements would not allow quick and timely possibility for an exemption, in the way this exemption is suggested, so that unforeseen circumstances could be dealt with quickly.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Department staff, do you foresee some supporting regulations coming along to accompany this bill? Again, in the interests of transparency and of guarding against the future misuse of what is fairly broad discretion by the minister, is it possible that regulation could actually be more prescriptive in terms of what must be done when a minister exercises this discretion?

Ms. Natasha Rascenin: I just want to clarify that the exemption from the Statutory Instruments Act applies only to clause 6, the exemption clause. It does not apply to the entire legislation, so it allows for an exemption clause to be exercised. We believe that's sufficient in that case.

Mr. Ken Hardie: But it's specifically to clause 6 that I am referring. My question—or make it a suggestion if you like—is that something be put in regulation that requires a certain level of transparency so that the minister is required to let the public know when this is happening and the reasons for it.

I guess I'm asking if that's possible outside of this piece of legislation.

Ms. Natasha Rascenin: I'm not able to answer that question.

I think transparency is being suggested through other amendments that are coming up.

(Amendment negated [See *Minutes of Proceedings*])

• (1710)

The Chair: Next is amendment NDP-8.

Mr. MacGregor, would you like to move that? Would you like to speak to it?

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): I would, Chair, and thank you very much for recognizing me. I'm glad to see my colleagues dropping in like this.

I just had a quick conversation with my colleague Mr. Cullen, and it appears to me that all of our amendments to this bill are an effort to increase a little bit of public scrutiny.

On a personal note, as a coastal British Columbian and a proud Vancouver Islander, I know that Mr. Cullen and his colleague Mr. Donnelly, both coastal British Columbians, do have the interests of our communities at heart. I sincerely hope my colleagues will see the wisdom in these amendments and give them some great consideration and offer their support for them.

I thereby move the amendment, Madam Chair.

The Chair: Would the officials like to speak to amendment NDP-8?

Are there any questions or discussion?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Next is amendment G-1.

Mr. Fraser.

Mr. Sean Fraser: Madam Chair, I will say, perhaps for the benefit of Mr. MacGregor, who came in partway through today's meeting, that the purposes of the last few amendments I hope to achieve with this amendment.

I explained to Mr. Cullen that I shared some of his reservations about the exercise of an exemption power without some opportunity for the public to scrutinize the use of that power. I think it's an important suggestion. Where we differed was only on the mechanism to achieve that. I had some reservations around the Statutory Instruments Act only because of the timeline with which it could preclude the use of that power in an urgent situation.

The proposed amendment would add a third subsection that would require the minister to make accessible to the public, on the Internet or by other means, the use of the public interest exemption so that they're not operating in secrecy. That is really the intent of this proposed amendment.

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

(Clause 6 as amended agreed to)

Hon. Michael Chong: On a point of order, Madam Chair, after we consider clause 7, I'm wondering if we can group clauses 8 through 23 together as a single vote.

The Chair: Thank you for that suggestion. I will need unanimous consent to do clauses 8 to 23 together when we get there.

(On clause 7)

The Chair: We are now on PV-4.

Would the department like to comment on PV-4?

Ms. Natasha Rascenin: I think we've covered it already.

The Chair: Thank you.

Are there any comments or suggestions?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: On NDP-9, we'll go to Mr. MacGregor.

Mr. Alistair MacGregor: Madam Chair, it's pretty clear what our amendment is trying to do here. In clause 7 we're replacing line 12 on page 4. It's basically to change the maximum carrying capacity.

I just have a technical question. My notes here say that a first amendment was required. Is this still in order?

The Chair: Yes, I'm advised that it is.

Mr. Alistair MacGregor: Then I so move the amendment, Madam Chair. I'll leave it at that.

The Chair: Would the department like to comment? No.

Are there any questions on NDP-9?

(Amendment negated [See *Minutes of Proceedings*])

(Clause 7 agreed to)

The Chair: Now we will go from clause 8 to clause 23.

Is there any discussion?

(Clauses 8 to 23 inclusive agreed to)

(On clause 24)

The Chair: Next is PV-5.

You're right on time, Ms. May.

•(1715)

Ms. Elizabeth May: Madam Chair, I'm sorry for missing one of my amendments.

This is a pretty straightforward amendment in seeking greater public access to the information and the documents that are referred to in the act. This would empower the cabinet to make the regulations regarding proactive disclosure of reporting and enforcement information and ensure that there's adequate time to consider and address issues. This was brought up in testimony, which I think members will recall, from West Coast Environmental Law and the Heiltsuk Nation.

Access to information is the goal of my amendment PV-5, which would amend clause 24 on page 14. I'm happy to answer any questions about why I've brought this forward, but it is based on evidence you've heard.

The Chair: Would the department like to comment?

Ms. Natasha Rascenin: I will just say that the way the clause is written—that the “Governor in Council may, by regulation, amend the schedule”—the regulatory process under the Governor in Council does include transparency and consultation and is part of that process. So that process would indeed be followed.

The Chair: Mr. Fraser.

Mr. Sean Fraser: Thank you very much, Ms. May. I appreciate the amendment. I have just a couple of questions.

By way of background, I spent a little bit of time previously in my career working for a human rights organization that focused on access to information laws. It escapes me how the permissive ability to make regulations about access to information under this legislation would not be redundant, given that existing access to information legislation would apply. If we make amendments to the schedule, for example, it would follow the regulatory process, and all would be public, with a period of consultation as well.

I appreciate the spirit of it, but when I look at it, it appears to not necessarily add something to the public disclosure process.

Ms. Elizabeth May: If I may say so, our new access to information law, Bill C-58, does move towards proactive disclosure of certain things but doesn't touch on this at all.

My effort was to ensure that since we have the regulation-making powers of the Governor in Council under this particular bill in clause 24... At this point the only thing the Governor in Council is empowered to do by regulation is to amend the schedule by adding or deleting any oil or class of oils. Expanding that to ensure that the Governor in Council can make regulations to facilitate public access to information, I think this is very helpful.

I know we're looking at Bill C-48 and not Bill C-58, but I am of the view of the Information Commissioner that Bill C-58 is legislation that takes us backwards and that will make it harder to access information. Anything we can do under this bill to make it easier for the public and first nations communities to have access to that information proactively...

Certainly there's no harm in this amendment, and I think you could ask your officials whether it does any damage. You can keep your fingers crossed and hope the public's going to be able to get at

it, but I've said for years—it's a good line, so I'll say it again—that Canada's freedom of information acts have tended to, for years, be freedom from information. I don't think they're getting better, so anything we can do in this bill to create more access to the information that first nations have wanted on a timely basis and that environmental law groups have wanted on a timely basis...

Maybe the officials could tell me how it does any harm. The most I've heard them say so far is that we don't need it because it's redundant, and that's not something I believe.

Thank you.

•(1720)

The Chair: Mr. Fraser.

Mr. Sean Fraser: I think we have counsel at the table, if I'm not mistaken.

Does the proposed amendment add any new protections to the public's access to information?

Mr. Joseph Melaschenko (Team Leader and Senior Counsel, Maritime Law, Department of Transport): There are no substantive protections in the proposed amendment. It's a proposed power to make regulations about access to information. What's left unclear about this amendment is how that would differ from the existing scheme in the Access to Information Act, and how new rules could apply in the event of a conflict with that act, which would supersede these regulations.

The Chair: I'm not seeing any further discussion.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: On amendment NDP-10, go ahead, Mr. MacGregor.

Mr. Alistair MacGregor: Madam Chair, I would direct the committee's attention to clause 24, which states, “The Governor in Council may, by regulation, amend the schedule by adding or deleting any oil or class of oils.”

I'm sure my Liberal colleagues will agree with me that their government's mantra is openness, accountability, and transparency. I think it's fairly critical, to respect that vision of government, that we amend this section so that if the minister decided that a particular fuel type was to be removed from the ban, the minister in question would make a sustained effort, allowing whatever measure he or she wanted, to inform the public as to why that particular fuel type was being removed.

If we look at the different classes of fuel that can be transported over our waters, we know that they behave differently based on their chemical makeup and they behave differently in water. I think that the residents of coastal communities should have that reasoning from the government. They should receive that public notice that this particular fuel type is going to be removed from the ban, and I believe that this fits very well in the spirit of the Liberal government's attempts to be open, transparent, and accountable, and I hope my arguments are enough to bring my Liberal colleagues on board to sustain this amendment.

With that Madam Chair, I move the amendment.

Thank you.

The Chair: Thank you, Mr. MacGregor.

Do the department officials want to comment?

Ms. Natasha Rascenin: I would like to add an explanation to elaborate on what I said earlier about how the regulatory process that is proposed here is the standard regulatory process that requires quite a bit of transparency. There is publication of proposed amendments in the *Canada Gazette* and a prescribed consultation process before any changes are approved. It would also, in fact, be subject to the Statutory Instruments Act, and all of those elements are already in the clause.

The Chair: Mr. Fraser.

Mr. Sean Fraser: I might request just a 30-second huddle here. I appreciate the spirit of it. As was just explained, when there's a change made to the schedule, right now it is published through the *Canada Gazette* and it is made public. If you wouldn't mind just giving us 30 seconds to chat it over, that might be helpful for members on this side of the table.

The Chair: We'll suspend for a moment or two.

• (1725)

The Chair: I will call the meeting back to order.

Mr. Fraser.

Mr. Sean Fraser: One of the things I wanted to confirm was that the spirit of it is that it is published through the *Gazette*, but the additional process through the existing measure requires an open public consultation as well, which I think might actually increase the transparency rather than just saying that the minister can notify the public in any manner they deem appropriate. So I sincerely appreciate the motivation behind it and agree with it, but I think in terms of the process, the ordinary regulatory process might give more protection than the proposed amendment would. That is my opinion on this one.

The Chair: Mr. Sikand.

Mr. Gagan Sikand: Just to add to that, you missed it, but your colleague Mr. Cullen had a jovial way of saying this himself and he actually stated that we inform the public through the *Gazette* as well.

The Chair: Is there any further discussion on amendment NDP-10?

Go ahead.

Mr. Alistair MacGregor: Your point, sir, is well taken, and with respect to the department, Mr. Cullen did make reference to reading the *Gazette* to his children to help them to go to sleep.

I previously worked for a member of Parliament, so I have a fairly long history in dealing with the federal bureaucracy. What I found in my experience was that they are all fantastic people, but sometimes they and civil society organizations are guilty of working in silos, and sometimes the information is made known to stakeholders but

not to the general public. I think by codifying the requirements, we add that kind of certainty to this process.

I'll end on that, Madam Chair, and thank you for this opportunity.

The Chair: Thank you, Mr. MacGregor.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 24 agreed to)

Hon. Michael Chong: Madam Chair, on a point of order, can you seek the unanimous consent of the committee to group clauses 25 through 31 inclusive together as a single vote?

The Chair: Do we have unanimous consent to group clauses 25 to 31?

Some hon. members: Agreed.

(Clauses 25 to 31 inclusive agreed to)

The Chair: Shall the schedule carry?

Some hon. members: Agreed.

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the committee order a reprint of the bill as amended?

Some hon. members: Agreed.

The Chair: Thank you very much.

Just before we adjourn, our meetings will be Mondays and Wednesdays in our next segment coming at the end of January.

On Thursday we will be dealing with Mr. Bratina's water quality motion and Bill C-344 and anything else we can add to that meeting.

Thank you to the departmental staff for coming and for all of your assistance.

The meeting is adjourned.

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