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Chair

Mr. Leon Benoit

Standing Committee on Natural Resources

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● (1530)

[*Translation*]

The Vice-Chair (Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP)): Good afternoon and welcome to the 53rd meeting of the Standing Committee on Natural Resources.

The topic on today's agenda is Bill C-46, An Act to amend the National Energy Board Act and the Canada Oil and Gas Operations Act.

In the next two hours, we will be hearing from four witnesses.

[*English*]

In the room we have Mr. Martin Olszynski from the faculty of law at the University of Calgary. As well, we have Mr. Ian Miron, who is a barrister and solicitor but is here to speak on behalf of Ecojustice Canada. Mr. Robert Blakely is the Canadian operating officer with Canada's Building Trade Unions.

Welcome, all of you.

By video conference from Calgary, we have Jim Donihee, acting chief executive officer for the Canadian Energy Pipeline Association.

Do you hear us well?

Mr. Jim Donihee (Acting Chief Executive Officer, Canadian Energy Pipeline Association): Yes, I hear you very well, sir. Thank you.

The Vice-Chair (Mr. Guy Caron): Thank you, Mr. Donihee.

We have two hours for this meeting.

[*Translation*]

I am going to ask you to put on your headsets. Are you hearing the interpretation clearly, Mr. Donihee?

[*English*]

Mr. Jim Donihee: I do. Thank you for that.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Great.

The witnesses have about seven minutes for their presentations.

Mr. Olszynski, the floor is yours.

[*English*]

Mr. Martin Olszynski (University of Calgary, Faculty of Law, As an Individual): Thank you, Mr. Chair, and members of the committee.

My name is Martin Olszynski. I'm an assistant professor at the University of Calgary, Faculty of Law. The focus of my presentation today is on what are commonly referred to as the environmental damages provisions of Bill C-46.

I began thinking and writing about environmental damages roughly 10 years ago, when the Supreme Court of Canada first opened the door for governments to sue for such damages in a case called Canadian Forest Products v. British Columbia. I have since written several articles on this topic, including with one of Canada's leading resource economists, Professor Peter Boxall.

I will begin with a brief primer explaining this concept of environmental damages. I'll then describe their role and their treatment under Bill C-46. Finally, I will make two recommendations for improvement.

Most simply, environmental damages can be understood as the financial compensation awarded for the loss or impairment of some public environmental asset and the services it provides, for example, a forest, in the case of Canadian Forest Products, or a coastal area, such as was affected following the *Exxon Valdez* spill or the Gulf of Mexico following the Deepwater Horizon blowout.

Environmental and resource economists divide such harms into the loss of two kinds of values: use value and non-use value. Referring to an Environment Canada publication, the Library of Parliament's legislative summary of Bill C-46 defines these two values as follows:

> Use values are associated with direct use of the environment such as fishing and swimming in a lake, hiking in a forest - or commercial uses such as logging and farming. Non-use values are related to the knowledge of the continued existence of the environment...or the need to leave environmental resources to future generations.

As committee members might imagine, environmental damages assessment can be a complex and difficult task. Various scientific disciplines—ecology, toxicology, hydrology—are applied to first determine the extent of harm done, while economics and the techniques of environmental valuation in particular are then used to convert this harm into monetary terms.

Under Bill C-46 there are actually two different roles for environmental damages. They play a role in sentencing and they play a role in civil liability. As to sentencing, where an operator commits an offence under the NEB Act, the proposed section 132—and this is clause 37, page 35—directs a sentencing judge to consider the "damage or risk of damage to the environment" as a result of the offence. That is further defined under subsection 4 as "the loss of use value and non-use value". Through this amendment, the NEB Act joins the ranks of at least 10 other federal environmental laws with similar sentencing provisions. Although light on details, this wording is both simple and comprehensive.

The other environmental damages provisions, which are decidedly more opaque, are found in the context of civil liability. Under the proposed subsection 48.12(1)—and this is clause 16, pages 6 and 7 of bill—there's a reference to three heads of damages: "(a) all actual loss or damage incurred by any person..."; "(b) the costs and expenses" of cleanup; "(c) all loss of non-use value relating to a public resource that is affected" by the spill.

In other words, environmental damages are not actually referred to in this part of the bill; rather, their availability—at least partially—is implied by the reference in paragraph (c) to "all loss of non-use values relating to a public resource...". Use values are not explicitly referred to, although as I will explain, some of these may be caught by paragraph (a).

There are two other relevant provisions I want to touch on just briefly. These are proposed subsections 48.12(9) and 48.13(5). The former states that only federal and provincial governments may sue for the loss of non-use values, while the latter states that the NEB is not required to consider the potential loss of non-use values when determining the financial resources that operators will be required to maintain for the purposes of absolute liability.

My first recommendation is that the third category of loss under the civil liability provisions be amended to refer simply to environmental damages. For instance, "all environmental damages resulting from the release...", and that this be coupled with an additional subsection defining environmental damages, as is the case in the sentencing provisions. Those are the simpler and more comprehensive provisions, and I suggest that the civil liability provisions be amended to reflect that simple and comprehensive structure. This would not only simplify this section, but it also seems necessary to correct what appears to be an omission in the current bill.

● (1535)

As the committee is probably aware, most of the wording here was brought over almost verbatim from Bill C-22, the Energy Safety and Security Act, which amended COGOA along similar lines. That legislation already had some spill-related provisions, and specifically a definition for "actual loss or damage". I'll just read that definition quickly. It "...includes loss of income, including future income, and, with respect to any aboriginal peoples of Canada, includes loss of hunting, fishing and gathering opportunities."

On my reading of this bill, this definition for "actual loss or damage", which admittedly does capture some of the use values that I was referring to before, has not been brought over. Even if it were, I submit that there would still be a gap in the legislation. I can provide some examples of that gap after my presentation, if the committee is interested.

My second recommendation is that the Governor in Council should be required within a certain timeframe, or at least authorized, to make regulations setting out a process for environmental damages assessment. Reliance on this process should result in a rebuttable presumption of validity in any action for such damages, whether in court or before the pipelines claim tribunal. First, and as noted above, environmental damages assessment is a difficult and complex exercise; regulations would bring certainty to all parties and reduce needless litigation. It is for this reason that the equivalent American legislation, CERCLA and the Oil Pollution Act, contains such provisions, and that processes have been prescribed for the purpose of what is referred to there as "natural resources damage assessment". I submit that such regulations represent the gold standard in this context.

My second reason tracks the preventative spirit of the bill. There are now roughly 10 federal environmental laws with some kind of environmental damages provisions, and it has been 10 years since the Supreme Court opened the door for governments to sue for these, and yet I am not aware of a single case where the federal crown has actually sought to do so. Perhaps this is something that future government witnesses could shed some light on. Whatever the case, this reality greatly undermines, in my view, the deterrent effect that statutory liability regimes like Bill C-46 are intended to create.

● (1540)

The Vice-Chair (Mr. Guy Caron): Mr. Olszynski, can you start your conclusion at this point?

Mr. Martin Olszynski: Essentially I'm two lines away, Mr. Chair. Thank you.

My final comment there simply is that the making of such regulations, which ideally would be made applicable to all of the federal environmental damage assessment regimes that I just referred to, would go a long way, I think, in strengthening the preventative effect of this legislation.

Thank you for your time.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Olszynski.

Our next witness is Mr. Miron from Ecojustice Canada.

Mr. Ian Miron (Barrister and Solicitor, Ecojustice Canada): Thank you, Mr. Chair, and thank you to all the members. I appreciate the opportunity to present today.

As you might know, I'm a lawyer here on behalf of Ecojustice, which is Canada's largest public interest environmental law organization. Ecojustice has worked extensively on pipeline issues across Canada as well as on statutory liability regimes, in the context of the energy sector more broadly. This will be the focus of my presentation today.

I think we can all agree that Bill C-46 is much needed and, quite frankly, long overdue. That being said, there are some significant shortcomings in the bill as currently drafted. I'm going to focus on three of those today.

First, the absolute liability limit is inappropriately low. Second, more guidance is needed around the assessment and calculation of damages for the loss of non-use value relating to a public resource, which I'm going to refer to as “environmental damages”. Third, although the bill provides some interesting new tools for seeking compensation and reimbursement in the event of a spill, the use of most of these tools is discretionary, not mandatory.

As currently drafted, the bill can best be described as “polluter might pay”. It offers modest improvements on the current regime, but it does not fully implement the polluter pays principle, and therefore continues to expose Canadians to an unacceptable portion of the financial risks of a pipeline spill.

Moving to the absolute liability limit, it's positive that the bill incorporates the polluter pays principle into the National Energy Board Act. The bill then restricts absolute liability to $1 billion for spills from large oil pipelines.

Imposing absolute liability up to that $1 billion limit is largely an improvement over the status quo. I say “largely” because it limits what was unlimited liability under the Fisheries Act for certain spill response costs. ln the case of a major spill, $1 billion isn't enough to cover the cleanup costs, let alone compensate victims for damages and all Canadians for environmental damages. We have seen Enbridge's line 6B rupture in Michigan. The cleanup costs have topped $1.2 billion so far. There's still oil in the river there, and there's more work to be done.

ln that light, limiting absolute liability to what seems to be an arbitrary figure of $1 billion inappropriately restricts the polluter pays principle and allows polluters to shift a portion of the financial risk of a pipeline spill back onto Canadians.

Moving quickly to environmental damages, I am pleased to see that the bill includes liability for the loss of non-use value. This measure is absolutely crucial to implement effectively, because a major oil spill can never be fully cleaned up and wildlife and the environment in the vicinity of a spill will often be killed or seriously harmed before cleanup efforts can begin.

Beyond recognizing that compensation for these environmental damages is available, the bill provides no details on how they will work in practice. This lack of guidance, I submit, makes it less likely that a government will try to recover compensation. At the very least, we need a regulation-making power so that some guidance can be provided, the holes can be filled in. I urge the government to consult publicly on such guidance.

Moving to the new recovery mechanisms, the bill does provide some new tools to respond to spills and to recover damages or expenses from polluters. The use of many of these tools is left to the discretion of the NEB. Many of the tools are also contingent on the polluting company being designated by cabinet. Designation is a discretionary decision that would allow the government to, for example, take over spill response or to appoint a specialized pipeline claims tribunal to decide claims for compensation.

Staying with that pipeline claims tribunal for a few seconds, it is worth noting that any awards the tribunal makes appear to be paid directly out of taxpayer money, presumably to ensure that victims are compensated in a timely manner.

Where taxpayer funds are used to compensate victims of the spill, the NEB has the option to try to get this money back from the polluter. If the polluter doesn't have enough money to pay, then they can also try to get it back from a broader subset of the pipeline industry through various fees and levies. Again, these tools are discretionary. The NEB doesn't have to use them, and this is concerning.

● (1545)

In keeping with the polluter pays principle, the NEB should be required to use any and all available tools to make sure that taxpayers aren't left footing the bill for the cost of a pipeline spill. This is particularly the case given that Bill C-46, in the context of this bill's claims tribunal, contemplates non-Canadians seeking compensation before it. Obviously, exposing Canadian taxpayers to that kind of financial risk is not acceptable.

To sum up, the bill does represent a move toward a polluter might pay model, but the shortcomings of the bill still leave Canadians exposed to an unacceptable portion of the financial risks of a pipeline spill.

Those are my remarks, subject to any questions. Thank you for the opportunity to speak today.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Miron.

We now move to Mr. Blakely, representing Canada's Building Trades Unions.

[*English*]

Mr. Robert Blakely (Canadian Operating Officer, Canada's Building Trades Unions): Mr. Chairman and members of the committee, thank you very much for the opportunity.

I suppose it's pretty obvious why I'm here. We build pipelines. We're interested in building them. But there's a lot more to the pipeline business for us than a couple of jobs putting some sticks of pipe in the ground.

A pipeline is an infrastructure link. It's a utility in effect, which links the upstream, the downstream, and the eventual place in which the extracted material is processed. For us, it means linking thousands of high-paid, high-skilled jobs in, say, Fort McMurray, with thousands of high-paid, high-skilled jobs in Quebec City, if energy east goes through, or in Saint John. We're really interested in this bill.

A failure to build pipelines has a net restraining effect on the industries that depend on it. If you don't have a pipeline, you can't stack up natural gas or oil or something else, in the hopes that somebody will find a way to get it to market. Pipelines are, and remain, the safest means of transporting hydrocarbons.

I don't want you to take my remarks to be a suggestion to just build them because that would be great for us. The truth is, we live here. The railroads that occasionally takes oil through the centre of most towns in the west—I'm from the Prairies—go through the centre of our communities. These are our jobs, but we're not prepared to sell out the environment for the sake of a couple of paycheques.

When I looked at the bill, I looked at it like you would look at a collective agreement. When you vote on a collective agreement, you vote on a number of things that are in there. There are some things I really like; there are some things I'm okay with, and there are other things that I thought maybe could be clarified a bit. At the end of the day, and on balance, what is being proposed here is at least a reasonable compromise that may well serve us in the long-term future.

Do some of the provisions require some clarity? I'm a lawyer, so I love to read this sort of stuff. I don't see an enormous issue of principle between the parties. I think the issues here are about deconflicting, enhancing, and otherwise looking at this body of amendments and trying to move it forward.

I have some suggestions. First of all, there are a number of provisions that require the National Energy Board, should it so choose, to do some things. One is to always use the best technology available. We agree. You should use the best technology to build the stuff, but the National Energy Board shouldn't specify what that technology is.

Furthermore, we agree and would support the National Energy Board being resourced appropriately to get the right people to do the right things at the right time.

With regard to the provisions that would allow the National Energy Board essentially to take command and control of an incident, I looked at that and thought about it for a while. In one of my other lives I was a naval officer. It is difficult to imagine sometimes, when you're sitting at a desk in an office a long ways away from the guy who's standing there with water coming down in a number of places, how much more difficult it is to make the right decision for the people who are on the scene.

To some degree, the pipeline operators may be in a better position to make decisions than the National Energy Board. Having said that, there should be a provision for the National Energy Board to be able to step in if people are not appropriately dealing with issues.

● (1550)

On the issue of absolute liability, the $1 billion, I don't see in there the removal of the common-law right to sue beyond the absolute limit based on fault or whatever else.

We're supportive of the polluter pays principle, and perhaps some of the discretionary things that are within the bill are appropriate in the circumstances. Sometimes we need to rely on people like the National Energy Board to make reasonable and rationed decisions, and we need to give them some discretion to do that. A suit of clothes that fits you perfectly before you gain 10 pounds needs to be let out occasionally. Maybe the National Energy Board can be the tailor for that.

Those are my remarks. I'll answer questions you may have.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Blakely.

[*English*]

We'll finish with Mr. Jim Donihee from the Canadian Energy Pipeline Association for seven minutes.

Mr. Donihee.

[*Translation*]

Mr. Jim Donihee: Mr. Chair, thank you for providing me with this opportunity to share some remarks with you.

[*English*]

Mr. Chairman and members of the committee, thank you very much.

My name is Jim Donihee. I'm the chief operating officer and the acting chief executive officer for the Canadian Energy Pipeline Association. I thank you for the opportunity to present some remarks.

First I'll give you some background. CEPA operates 115,000 kilometres of transmission pipelines across Canada, much of which falls under the jurisdiction of the National Energy Board. Our members transport approximately 97% of all of the daily natural gas and onshore crude oil that is produced, and we have been bringing it to markets very safely for some 60 years. For example, in 2014 our members collectively transported over five trillion cubic feet of natural gas, and 1.2 billion barrels of liquid petroleum products. This represents approximately 23% of Canada's mercantile trade, and it makes an extremely significant contribution to the social fabric of our nation.

While our longstanding operational safety record of 99.9995% between 2002 and 2013 is truly exceptional, at the same time we recognize that it is not sufficient; it's not good enough. Our CEOs have publicly committed to zero incidents on pipelines, and we're very actively working to get there.

Bill C-46 as proposed certainly complements our industry's strong belief in the polluter pays principle, excellence in emergency response, pipeline safety, and environmental protection. For that reason, and to reassure Canadians that our industry is fully dedicated to a safe and socially responsible energy pipeline transmission industry, CEPA supports the proposed regulation.

Our members are focused first and foremost on pipeline safety and the prevention of all incidents throughout the entire life cycle of pipelines. This continuous focus on safety saw us invest over $1.4 billion in 2013 alone, in order to ensure the safety of these pipelines. We're working aggressively through our program entitled CEPA integrity first, a management systems approach that is addressing critical priorities in pipeline operations, commencing with pipeline integrity and control room management. The integrity first program, patterned after the responsible care initiative of the chemical industry, will drive significant performance throughout our industry based on our sincere desire to exceed regulatory compliance.

This year as well, CEPA will take a big step forward by committing to conducting a safety culture survey of its entire membership in order to ensure that we focus on the human dynamic that is also so absolutely critical to excellence in performance.

We are actively participating in the development of standards, and these standards, constructed largely by the Canadian Standards Association, apply to our operations throughout the design, construction, operation, and eventual retirement of the pipelines that we have the privilege of stewarding.

The best available technology is absolutely key to the way our industry functions. Through initiatives such as the Canadian Pipeline Technology Collaborative, which is a new initiative being formed, we seek to leverage new technologies through academic institutions and in collaboration with many government partners.

I think it's important to take a look at the commitments that our industry has made in recent times. First, for example, is the mutual emergency assistance agreement, the MEAA, that was first exercised in 2014 and that clearly recognizes in this day and age that any incident of a pipeline company is everybody's incident. This MEAA will seek to harness, and does harness, the resources of all of our members in order to respond in the most effective and immediate manner to any incident that might emerge.

Along with the MEAA, CEPA's members have adopted an incident command system common to all. It reflects interoperability and enhances interoperability among all of our members.

● (1555)

Transparency is absolutely key to earning and sustaining the trust of Canadians. To that end we've undertaken the formulation of a task force that is addressing the common template that will make available to all Canadians every bit of information that we can in order to earn their trust, while withholding only such information that is critical to privacy considerations and the security of critical infrastructure. That information is always made available to all emergency responders.

We've heard the comments by Mr. Blakely about the NEB and we believe strongly that the oversight that we receive from a competent regulator is vital to Canada's national interests. We are well served by having a strong regulator that is capable of providing timely, science-based, and fact-based consideration of our projects.

With that in mind, especially in consideration of the new powers and authorities that the NEB will be adopting through this bill, we believe that it's incredibly important for the NEB to receive the levels of funding and the flexibility of using those funds that are necessary to ensure that it can attract and retain expertise critical to being able to fulfill its mandate.

Our member companies have an exceptional track record with a very low frequency of incidents. They believe strongly in the polluter pays principle and have always ensured appropriate restoration of the environment without any financial consequence borne by the public, including considerations for loss of use. CEPA members are dedicated to the commitment of this obligation through preparedness and response. They will ensure that they fulfill their obligations as reflected in this bill.

Notwithstanding CEPA's strict adherence to the polluter pays principle, and our strong response capabilities, we are supportive of the proposed legislation that sets out liability and compensation requirements for companies operating crude oil pipelines.

As I seek to conclude, Mr. Chair, I would offer the following recommendations for this very positive step forward.

Regulatory requirements that originate from the bill should be risk-based and respond to the proven safety record that the transmission pipeline industry has demonstrated.

The federal government should continue to explore opportunities to support multi-sectoral initiatives, such as the CPTC, which will identify, develop, and implement advanced science and technology. The Canadian Standards Association remains an extremely effective body for the development of standards. We collaborate routinely and press the envelope forward to develop these standards.

We absolutely respect the role of the NEB and believe it to be vital to the good functioning of a highly responsible industry on behalf of Canadians. We believe that the NEB requires the funding that it needs and the flexibility of employing that funding to meet the obligations that you will offer to it through the approval of this bill.

With that, Mr. Chair, I'd like to conclude my comments and thank you for the opportunity to present some comments to you. The Canadian energy pipeline industry is an industry that has a proven, long-standing track record and one that Canadians should be proud of. We look forward to making a continued contribution to the success of our nation for many years to come.

Thank you.

● (1600)

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Donihee.

We now move to questions from committee members. We will start with a seven-minute round.

We start with Mrs. Perkins, followed by Ms. Duncan and Mr. Regan.

Mrs. Perkins, the floor is yours.

[*English*]

Mrs. Pat Perkins (Whitby—Oshawa, CPC): Thank you very much, Mr. Chair.

I'd first like to thank all of you for making your presentations today. It's always very interesting for us to hear all the different points of view.

Also, particularly to Mr. Donihee, regarding the report that you've generated, I think we need to congratulate the industry on the success rate we've had. You have been very diligent. A 99.9% approval rating in terms of no spills has been quite remarkable.

I suppose the first question then needs to be about when things of this nature do happen. Mr. Donihee, how do people who are affected by an incident currently seek compensation? What process do you have in place and what's your part in that?

Mr. Jim Donihee: The question is for me?

Mrs. Pat Perkins: How do you guys get involved in a spill?

Mr. Jim Donihee: Most directly at the moment, you would see that the National Energy Board plays a very strong role in supervising and monitoring the command and control system, the incident command system, that the companies would bring to bear. As I mentioned in my remarks, companies have responded very effectively over time, and, quite honestly, their chequebooks come out and they look to respond immediately to the immediate concerns of directly impacted individuals. They'll honour them with hotels. They'll look after all their immediate costs, and as I indicated, they'll certainly look after loss of use and the reparation of any damages that have been experienced by them as well.

We see the proposed legislation as providing a much more deliberate mechanism through which those who are affected would be able to engage with the NEB or, ultimately, a tribunal to ensure that their needs have been addressed.

Mrs. Pat Perkins: You gave us a number of recommendations at the end of your presentation, the first of which was that "Regulatory requirements that originate from the bill should be risk-based and respond to the proven safety record that the transmission pipeline industry has demonstrated."

Would you like to elaborate for us on what you actually mean by the words "risk-based?"

Mr. Jim Donihee: As we see it, much of the discussion could potentially evolve into a conversation focused on consequence alone, rather than on the likelihood of any of these occurrences. In no way would we wish to dismiss the necessary considerations for financial liability and any costs that would come from those. I think it is also important to recognize all the provisions I discussed in terms of the increases in technology, the incredibly strong track record, the strength and reputation of these companies, and their very sincere desire to make sure they do the right thing in the event that any incident ever occurs. Thus, likelihood as well as consequence are key when considering the kinds of monies that must be set aside in order to ensure immediate response, so that we don't strand the resources, so to speak, when the likelihood of any occurrence is extremely remote.

In no way does that consideration diminish the commitment of these companies to ensure that they respond entirely adequately to all costs and all obligations they would incur.

● (1605)

Mrs. Pat Perkins: Thank you very much.

Mr. Blakely, you've had an interesting life in the navy and now in the pipeline—

Mr. Robert Blakely: I started as a pipefitter.

Mrs. Pat Perkins: You started as a pipefitter—how awesome. It's all come full circle then.

I would like to explore some of the comments you made with respect to the NEB's role in all of this. You're saying that perhaps the wording in the document is a little bit too prescriptive. Do I have that correct?

Mr. Robert Blakely: Let me take a pace back from that. The NEB needs to be resourced and it needs to be able to deal with issues when it needs to deal with them. If the NEB is required to perform a mandatory function, it should be resourced and equipped to do that. If it has some discretion, the discretion should be clearly articulated and the reason for the discretion needs to be somewhat articulated.

If you have a tribunal that has no discretion, or if its entire discretion is "give me the baby or cut the baby in half", it's a bad tribunal. It needs to have the ability to make creative and facilitative decisions.

Mrs. Pat Perkins: You're not seeing that fulsome opportunity in the way things are worded now.

Mr. Robert Blakely: If you make everything mandatory, there is no fulsomeness in that. You need to have discretion, and the discretion needs to be discretion that the NEB is capable of delivering.

Mrs. Pat Perkins: Okay.

Mr. Robert Blakely: You can give them all the discretion in the world, but if give them 46¢, they won't be able to do anything.

Mrs. Pat Perkins: Okay, I think I have that now. Thank you very much.

With respect to the technology, you were speaking to always using the best technology portion, and what you're saying is, don't tell us what the best technology is.

Mr. Robert Blakely: Require someone to use it, but don't prescribe it.

Mrs. Pat Perkins: Don't prescribe exactly what it is they must use.

Mr. Robert Blakely: Yes.

If they use the best technology, they have to use it appropriately, but let the operator decide what the best technology is.

Mrs. Pat Perkins: How could that be—

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much.

I have to interrupt you because your seven minutes are up.

[*English*]

Mrs. Pat Perkins: Thank you very much.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Go ahead, Ms. Duncan. You have seven minutes.

[*English*]

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you very much.

I'd like to thank all four of you for appearing before us. I know you're all busy people, and it's always nice to see Mr. Blakely on the plane between Edmonton and Ottawa.

I really appreciate your comment, Mr. Blakely, on clarifying the exercise of discretion. I think that's a really good, broad comment and I appreciated it—within bounds, of course.

Mr. Miron, if I understood you correctly, you expressed concern about proposed subsection 48.12(5). It allows for more than $1 billion in compensation if prescribed by regulations. I'm wondering if you agree that the criteria for this, the further extension beyond a $1 billion, should be specified in regulations and that this regulatory process be open, transparent, and inclusive.

Would you agree that, absent those regulations, we lack legal certainty on if and when the obligation for compensation might exceed $1 billion?

● (1610)

Mr. Ian Miron: In proposed paragraph 48.12(5)(a), which I believe is what you're referring to, it just says that a greater amount can be prescribed by regulation. There's no clarification of that; there's no explanation on when such an amount might be required by regulation or prescribed by regulation.

Ms. Linda Duncan: Right, I'm actually looking at proposed subsection 48.13(5).

Mr. Ian Miron: At 48.13(5)?

Ms. Linda Duncan: Yes. It's on page 10 of the bill. It's close to what you're saying.

Mr. Ian Miron: Under the financial responsibility requirements?

Ms. Linda Duncan: That's right.

Mr. Ian Miron: Essentially, the bill as drafted requires a company to maintain the amount of financial resources necessary to pay their absolute liability limit, which is $1 billion for a large pipeline company.

Proposed subsection 48.13(5) gives the NEB.... I'm not sure I understand your question.

Ms. Linda Duncan: I'm probably leading you astray; you were correct the first time.

Mr. Ian Miron: Okay. Sorry.

Ms. Linda Duncan: I have a second question that goes to that proposed section.

I think you made a really valid point at the beginning, where, yes, supposedly it's polluter pays. They're saying a billion dollars will be the compensation limit unless, by regulation, the government determines it should be greater, but until those regulations are promulgated we don't know what the criteria will be for that and that leaves legal uncertainty.

Mr. Ian Miron: I think that's fair.

I would comment that it is positive that there's no ability to decrease the liability limit by regulation unlike in some previous bills we've seen.

Ms. Linda Duncan: Now, on proposed subsection 48.12(9), it deals with recovery of non-use losses.

Mr. Ian Miron: That's right.

Ms. Linda Duncan: I put this question to the government when they testified and I think maybe even to the National Energy Board. Do you think there should be public reporting on the processes the government uses to assess non-use losses and how much they will seek to recover, and what the outcomes are of seeking that recovery?

Mr. Ian Miron: I think this goes back to the need for more clarity around how those damages actually work. There's not even a power to make regulations regarding those damages right now. I think you could probably fit that into such a regulation.

Ms. Linda Duncan: Perhaps someone else wants to comment on that. Maybe Mr. Donihee might have some interest in that since there is potential for the government to seek recovery, but there isn't really any clarity when and how much they will pursue.

Mr. Jim Donihee: My understanding of the bill at this point in time is that in fact it is unlimited liability where the pipeline would be deemed to be at fault for the release that has occurred.

You do, in effect, have the opportunity to seek recovery to whatever amount would be necessary. In the event that you have some aspect of third-party damage, it does indicate the potential for a cap at $1 billion, but clearly still permits the discretion to recover such costs as the tribunal or the board deem to be necessary.

Ms. Linda Duncan: Mr. Donihee, I have a second question for you, and I put this question to the government and National Energy Board as well.

The current legislative regime—and I think some of the amendments go to this issue—allows for a system of government inspection, but also a great deal of self-inspection by the pipeline owners and operators. In many cases, they also allow the company to hire a consultant to do that inspection.

I'm advised by the government that these reports done by private inspectors are not publicly available. Do you think that could be a factor in lessening public confidence in the fact that the pipelines are being properly inspected?

Mr. Jim Donihee: The bill does provide for increased monitoring, and I think the industry is wide open to that. There's certainly a desire on our part, as I indicated during my own remarks, to enhance the transparency of operations because it's key to gaining and sustaining the trust of Canadians.

To the extent that monitoring and those inspections are currently done by the NEB, they're part of a public process. To the extent that they're contracted by third parties and done within the operations of the companies, at this point in time, the content remains that of the companies.

I think ultimately, in terms of earning the trust of Canadians, there would be little objection to ensuring that we make it fully known that we show the nature of the operations. As we further the development of the integrity first program, which I spoke to, you are going to see much more public reporting at an industry level—and also giving consideration, eventually, to reporting at an individual company level.

● (1615)

Ms. Linda Duncan: Thanks.

Am I hearing you correctly? You're saying that there may be more openness by the pipeline owners and operators to making these privately prepared pipeline inspection reports public.

The Vice-Chair (Mr. Guy Caron): You have about 10 to 15 seconds, Mr. Donihee.

Mr. Jim Donihee: Yes, I think that's absolutely worthy of consideration. I'd like to understand the nature of the concern and then gladly take it up with the member companies of CEPA.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Donihee and Ms. Duncan.

[*Translation*]

We now move to Mr. Regan, for seven minutes.

[*English*]

Hon. Geoff Regan (Halifax West, Lib.): Mr. Donihee, how should we decide what the absolute liability limit ought to be? What should be the criteria for calculating at what level you ought to set the absolute liability limit?

Mr. Jim Donihee: I think the limit, to this extent, has been set largely by some worst-case considerations that we have seen. I think one of the other panellists spoke to the total costs related to...call it a "worst-case situation" that transpired with one of our member companies. I think it has exceeded the billion dollar mark at this point.

As I indicated in my own comments, I think there is a cost to be borne by these companies in ensuring access to these funds. In no way, as I have indicated, is there any desire to limit their response requirements.

However, I think it's incumbent upon good government to ensure the costs that are induced by a risk-based approach to this, as I said earlier with respect to likelihood versus consequence, are considered as you seek to determine what the proper numbers should be.

Hon. Geoff Regan: Thank you very much.

It may be that other witnesses, as I ask them other questions, may want to add to or respond to that.

Mr. Olszynski, I think you were saying that instead of using the phrase "non-use damages", we should be using the phrase "environmental damages". Is that defined elsewhere in legislation?

I'm trying to get my head around this. Is it possible that "non-use damages" could be a broader phrase than "environmental damages".

Mr. Martin Olszynski: To the first question, yes, that's what I am proposing, that in proposed paragraph 48.12(1)(c) the reference be changed to "environmental damages".

As I tried to set out in my remarks, environmental damages could be seen as the biggest envelope. Within that you have your two categories of "use value" and "non-use value". That's the universe of environmental damages.

As to why I referred to the sentencing provisions, exactly; there are in fact ten pieces of federal environmental legislation that refer to damage to the environment and then define that very simply as the loss of use value and non-use value. In fact now the NEB Act, as amended by this bill, would have that definition, but it only operates in the context of the sentencing provisions.

I think the reason it's been written this way, in the context of the civil liability provisions, is due to this idea that perhaps use values were dealt with sufficiently under proposed paragraph 48.12(1)(a), which refers to "actual loss or damage". I want to make it clear that some of those damages, probably some use values, probably would fall within that category, but certainly not all of them. So this is to ensure that it's comprehensive.

Again, bear in mind the restriction that was referred to earlier. The proposed paragraph 48.12(1)(c) damages—this reference that I'm suggesting to environmental damages—is only available to governments. That's consistent with similar legislation in other countries. It would essentially ensure that those damages would cover the full suite of environmental damages, but at the same time wouldn't result in double counting or anything like that.

Hon. Geoff Regan: Who should be able to sue for environmental damages?

Mr. Martin Olszynski: I'll answer the question more of who "does" right now. The "should" is maybe a bit trickier.

In other jurisdictions, such as the United States, this is a power generally confined to governments, the federal government in the U. S. and state governments. It is a bit broader in the U.S. in that state tribes are also authorized to sue. The reference under the American legislation, under CERCLA and OPA, is to trustees, that being the federal government, state governments, and state tribes.

I have in the past, blogging about Bill C-22, or ESSA, suggested that there might be scope here to broaden the category to recognize aboriginal governments, Indian bands and such, to claim for such damages within their territory. You could expand it to include municipalities. With the disaster that happened at Lac-Mégantic, amongst the tragic loss of life was also a massive environmental catastrophe. It seems to me that the municipality there should be empowered as well, frankly, as a representative of the people.

I guess my bottom line, to try to keep it simple, is that governments, various levels of governments, generally are accepted as being the right parties to sue for such damages.

● (1620)

Hon. Geoff Regan: Thank you.

Mr. Miron, I'm wondering if you could talk about the interaction between this bill and subsection 42(1) of the Fisheries Act, which provides for unlimited absolute liability for government response costs under that act.

Mr. Ian Miron: Certainly.

If a pipeline spill got into waters containing fish and caused a deleterious effect on those fish, subsection 42(1) of the Fisheries Act could have come into play to make companies absolutely liable for an unlimited amount of spill response costs. Bill C-46 basically closes that option off. Those are no longer recoverable under Bill C-46.

Hon. Geoff Regan: Thank you.

Mr. Blakely, you said, I think, that the NEB needs to have the ability for creative solutions. You talked about the nature of both discretion and capacity in the NEB.

Are you able to give us some examples of how that would work, and what you've seen that might work?

Mr. Robert Blakely: Let's say someone is suggesting that they're going to build a pipeline through difficult terrain. Give the NEB the ability to go out and find the right people to give it expert opinion. Have people within its ranks who can give advice to the board. Have the ability to be able to....

When the submissions in support of a pipeline go in, we're not talking about a nice, neat package of 12 pages of material that anybody can parse. It is millions of pages of material. It can't be just poundage; it has to be absorbed by someone who's saying "There's a hole here, there's a hole here, and there's a hole here". That's what I want to see the National Energy Board be able to do. Better solutions come from being better equipped to understand what is actually being asked.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Blakely and Mr. Regan.

[*Translation*]

We now move to a five-minute round of questions and answers.

[*English*]

We'll start with Ms. Block, followed by Mr. Trost.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

I know I made a comment last week in camera that I thought you did an excellent job of chairing our committee, and I want to put that on the record today. I think you're doing a fine job today as well.

I want to thank our witnesses for being here. This has been very interesting testimony. I appreciate the recommendations that have been made here today.

I'm going to focus my questions on Mr. Blakely and Mr. Donihee.

I appreciated it when you said, "A pipeline is an infrastructure link", Mr. Blakely, and that a failure to build a pipeline has a restraining effect on the industries that depend on it.

I would like to give you an opportunity to elaborate or describe for me the kinds of jobs that are created from building and maintaining a pipeline, and potentially how many jobs we may be looking at when you consider some of the proposals that are in front of us right now.

● (1625)

Mr. Robert Blakely: The pipeline itself is done by four principal crafts: the pipefitters, who do the welding and fitting the pipe up, and work on the pumping stations and the facilities; the operating engineers, the guys on the sidebooms, the cranes, and the backhoes who operate the heavy equipment; the teamsters who operate the big trucks that string the pipe; and the labourers who do the skid hustling and who are really the maids-of-all-work, doing everything from the guy they call the "band-aid", who's the first aid man, through to the straw boss, through to the whatever. There's another group of people who come in and X-ray, or it's now called integrated phased array... whatever. It's become much more complicated than it was in my day.

To do a fair sized pipeline of 300 kilometres, there will probably be two or three spreads for two seasons, probably employing upwards of 6,000 people. If it is an oil pipeline, it means we will have thousands of people in a variety of trades, including plumbers, boilermakers, millwrights, iron workers, sheet metalworkers, insulators, labourers, scaffolders, carpenters, and the occasional elevator constructor. I should have a list of all my affiliates are, shouldn't I? About 60 trades are involved.

The pipeline that has 1 million barrels through it, like Energy East, needs an infrastructure that costs, let's call it, $10 billion to build. Roughly translated, $10 billion in infrastructure takes 65 million work hours to construct. If we assume for the moment that it took 6,000 people to build it, which is not a bad estimate, those 65 million hours will result in a hundred full-time jobs. Of those hundred full-time jobs, 40% will be trades jobs to keep the place running.

Twice a year or perhaps once a year, depending on the place, roughly 3,500 people will descend on that facility for 42 days, basically rebuild it, and then disappear.

For us, these jobs are not petty. These are big-time, shoot-a-dime, work opportunities. They are the opportunities in which we get to train the next group of tradespeople. Where Canada sits right now, the construction workforce is basically a baby boom workforce. No one thought the baby boomers were ever going to retire. We're going to fool them. We're all going somewhere around June 16, 2016. We're looking at replacing, call it 350,000 people, and 40% of all of our managers and supervisors in the next seven years. We need ongoing work in order to train the next group that's coming.

I'm getting preachy now because this is near and dear to my heart. When you look at it, the jobs that are on the pipeline are only a pale reflection of the jobs that are created on both ends of that line.

Mrs. Kelly Block: Okay.

Am I done?

The Vice-Chair (Mr. Guy Caron): It's already been five minutes.

Mrs. Kelly Block: Thank you very much. I appreciated it.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much.

[*English*]

We now have Mr. Trost, for five minutes.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

Mr. Blakely, we're going to keep you busy here for a little while.

You made, I think, a fairly interesting point that I'd like you to elaborate on. You said that someone sitting at a desk may have a slightly different perspective than someone who's in the water with the water flowing in from all directions.

In reference to pipelines, as they relate to the bill that we're doing today—again, we're talking in generalities here—could you give a concrete example for somebody who has never worked on a pipeline of what you might be referring to?

Mr. Robert Blakely: The pipeline itself, the stuff that we do to build it?

Mr. Brad Trost: Yes.

Mr. Robert Blakely: If something goes wrong there won't be a big calamity because the pipe's still empty. If you go to Calgary to, say, TransCanada's Operations Control Center—they have a redundant control centre in Okotoks—it's like going onto the bridge of the starship *Enterprise*. They can tell you what's going on in every bit of their pipeline in pretty much real time. When something goes wrong, they either have a number of automatic systems that will shut things down, reroute them, or do whatever is needed, or the human beings who are there will be in a position to do something. After that, it is the workforce that is being maintained by the operator that will go out and do the spill containment. The person on the ground—in the navy we would call that the on-scene commander—probably has a better appreciation of what is going on than the guy back in his office somewhere. That was my point.

● (1630)

Mr. Brad Trost: What you're calling for is a change in the legislation that would give the person on the ground more discretion. Am I getting that correct?

Mr. Robert Blakely: Someone needs to make a decision as to whether the operator is dealing appropriately with the response. I would say that 95% of Mr. Donihee's operators are people you can rely on and take whatever they say to the bank. There are still some other people who occasionally have problems. Somebody needs to have the discretion to say, "Gee, here's the risk. Here are the consequences. These guys don't have a great track record. Maybe I'm taking over."

Mr. Brad Trost: Do you have a specific recommendation for how that could be addressed in the bill?

Mr. Robert Blakely: I'd have to think about it. What I can do is write something. I'm not a great draftsman—that's why I'm doing this, I guess—but I'll try to put something together and send it to you.

Mr. Brad Trost: Okay.

I'll turn to Mr. Donihee.

One of the questions we asked after previous testimony was about the economic impacts of this legislation on the industry. Quite rightfully, we got the answer that it really is going to vary depending upon the company because their situations are so different. I realize that's probably the context of it, but could you give a more definitive answer than the other witnesses—I believe they were from Natural Resources Canada—as to what the industry is looking at? I realize it will vary by company, but could you give us an idea of the scope of the economic impact this legislation might have on your member companies?

Mr. Jim Donihee: I'd also like to build on the previous comment about the command and control piece if there's a moment at the end of this.

I have to say that, at the moment, while we're waiting for further consultation in terms of the approval of the bill, various companies are taking a look at what sort of financial mechanisms they would have to put in place in order to ensure the availability of that billion dollars or whatever amounts of money are going to be mandated as being immediately necessary. Ultimately, we require greater clarification at that end.

What I can say is that all of the members of the Canadian Energy Pipeline Association are such substantial companies and of such a longstanding financial history—with strong balance sheets, and assets such as the pipelines themselves on the ground that are worth billions of dollars—that they will be capable of this. But as to exactly what the financial consequences are, we don't have enough information yet to assess what kinds of mechanisms they will have to put in place to provide the assurance to the National Energy Board that they have full access to the necessary monies.

If I may make a brief comment on the command and control piece that Mr. Blakely addressed, like him I give all my respect to the senior service. I served in our air force for 28 years. I think it's extremely important to realize that there's a significant cost to readiness. Our company is already mandated to be ready, evidenced, as I said, by some 300 emergency response exercises last year, and nobody knows their systems better than they do. I think, ultimately, you want to ensure that they are positioned to exercise the command and control for which they are fully liable. I think the suggestion is that we would not want to see the NEB step in hastily. However, in the event that a company is ever deemed to be irresponsible they should immediately step in.

The Vice-Chair (Mr. Guy Caron): Thank you, Mr. Donihee. I need to stop you here.

Thank you, Mr. Trost.

Next will be Ms. Leslie for five minutes, followed by Ms. Crockatt.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Mr. Miron, I have some questions for you. I appreciate the concept you put forward of "polluter might pay". That resonated with me. You talked about the fact that once we're over a billion dollars, the cost falls to Canadians for cleanup and compensation.

For me, all of this is with the backdrop of a couple of different things.

The first backdrop for me is the environment commissioner's 2011 report. The environment commissioner looked at the transportation of dangerous goods via pipelines and found little evidence that the National Energy Board was making sure that companies actually followed through on correcting their deficiencies in the practices they had, and also, alarmingly, that the NEB wasn't monitoring companies as to whether or not they had prepared emergency procedures manuals. That makes me think, then, about Enbridge and Kalamazoo and how the U.S. regulators likened the response to the Kalamazoo spill to the the Keystone Kops.

I think about the two overlaid. If we don't actually have an emergency procedure manual, what the heck is going on and how do we deal with it? The longer we're struggling to have a response, the more environmental damage there is and the higher the cost for cleanup and potentially for compensation.

My questions to you are around Bill C-46 and drawing on the experience of spills that we know about. How much did they cost? How much did they cost to clean up? What kinds of damages were there? What was the proportion of what the companies were on the hook for versus citizens paying through government? How much compensation actually went unsatisfied and wasn't paid out? Can you help us situate Bill C-46 within the context of what we know about spills?

● (1635)

Mr. Ian Miron: As I mentioned earlier, we know that Kalamazoo is over a billion dollars now and still going. A recent study out of Simon Fraser University estimated the potential cost of a worst-case scenario for the Kinder Morgan Trans Mountain expansion at over $5 billion and, for a bad case, but not the worst case, at a minimum of $1 billion.

Ms. Megan Leslie: Is that cleanup costs?

Mr. Ian Miron: I would have to confirm that, but I think that is cleanup, and not compensation. I could be wrong, though. I would have to confirm that.

Ms. Megan Leslie: Do you know anything about the costs of spills that we've seen, real spills, and how much companies paid versus citizens or governments?

Mr. Ian Miron: I actually do not have those numbers off the top of my head. I'm sorry.

Ms. Megan Leslie: Okay. That's fair.

I'm thinking about companies that actually have not been able to fulfill their obligation for compensation, companies that don't actually have those kinds of assets. Are you able to shed any light on that?

Mr. Ian Miron: I think that in some ways it's fortuitous that it was such a large company that had that spill in Kalamazoo, because they do have the financial wherewithal. Similarly, in the offshore context, in the Gulf of Mexico, we've seen that BP has the financial wherewithal, although now there's some question of whether their U. S. subsidiary is adequately resourced. I think there could be concern in the event of a major spill.

Ms. Megan Leslie: Keeping on with the polluter-might-pay idea, you've talked about how—I'm looking for the language you used —"there are no details on how to go about getting compensation". Mr. Blakely points out that his analysis of the bill says that we probably haven't eliminated "the common-law right to sue".

That brings me to your comment that the legislation isn't quite clear about what are the next steps. Can you expand a little more on that?

Mr. Ian Miron: Yes, I agree with Mr. Blakely that it not only preserves but also codifies the common-law right to sue in cases of fault or negligence. What this means is that it could take us 20 years to see any payment come out, as we saw in the *Exxon Valdez* situation, where the company was able to lawyer up to contest fault, to contest negligence, and to drag out the process through the courts.

Do you know what happened in that case as a result? Some of the victims died before any money was paid out. They didn't die from the effects of the spill. They died of old age.

I don't think it's appropriate to fall back on the common law, because we have these examples where it hasn't been effective in helping people recover compensation.

● (1640)

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Miron.

Ms. Leslie, your five minutes are up.

[*English*]

We'll move to Ms. Crockatt for five minutes.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you very much for the testimony we're hearing today. I think there are some interesting things.

I know Ms. Leslie asked this of one of the other participants on the panel who wasn't able to answer it.

I'm wondering, Mr. Donihee, if you could tell us if you know anything about the costs of spills in Canada, and what the average size and cost of a spill would be.

Mr. Jim Donihee: I'm sorry. I do not have exact numbers at my disposal either. I would be glad to undertake to get you some representative figures.

I can say, if you look, for example, at the Kinder Morgan spill that occurred in 2011, I believe, which was the result of a third party strike on that pipeline, the company dealt with all of its obligations without hesitation whatsoever and it has remediated all of the damage that was done, both damage to personal property such as homes and any minor damage that occurred on the waterfront.

Ms. Joan Crockatt: You were talking to us a little earlier about risks, and I think this legislation is to deal with the risks, but you wanted to ensure that we understand the risks vis-à-vis the consequences.

In earlier testimony from the NEB, we heard that there were 6.7 pipeline spills per year in Canada. Is that consistent with your information?

Mr. Jim Donihee: The figures we would speak to routinely would say, as you would have seen in my submission, that between 2002 and 2013 there were on average 3.75 incidents per year. When we're talking about pipelines, like oil pipelines, which is really what this bill seeks to address, that number was just under 2 per year throughout the period 2002 to 2013.

Ms. Joan Crockatt: So where would you put that risk of a spill occurring?

Mr. Jim Donihee: It's important to understand that most of those spills were extremely small in nature. To reach the threshold of what we call a significant event, a spill greater than 50 barrels of oil, in only two instances were there really substantial spills throughout that entire period. One of the spills that occurred between 2002 and 2013 constituted over 50% of the total volume. So we clearly need to be ready for that sort of circumstance, which I think the bill considers. We also need to recognize that we don't want to, as I suggested earlier, induce stranded capital available in terms of the costs associated with the great majority of those spills, which, while over 50 barrels of oil, are not huge in terms of what they represent, in terms of total spill volumes.

Ms. Joan Crockatt: Do you think the Canadian public understands what that 99.9995% is and do they have a different sense of what that risk is? I think we're walking around it, and this bill is all about minimizing the risk in the event that we might have a spill, but I'm just hoping that you can clarify for us how unlikely that might be, if that is your opinion.

Mr. Jim Donihee: I do believe it is extremely unlikely that we will have a spill. I would agree with you that the number is almost incomprehensible to Canadians and that what really matters to any Canadian is the idea that no matter how many spills there are, if there's one on their property, that's one too many. We agree with that idea, which is why we're working so diligently to make sure that spills never occur and, in the event that they do, that we respond immediately and very effectively.

We're working a lot more now with individual communities. We're walking the ground and working on improving the levels of trust we have with all Canadians. That means we need to be reliable. We need to be credible. We need to clearly understand their interests and their concerns, and we have to respond to them in a very prompt and authentic way to hear them and respond to them and to make sure they understand the significant unlikelihood of a spill occurring.

● (1645)

Ms. Joan Crockatt: We have a responsibility here as a government to protect the public environment and also to protect public jobs. I think Mr. Blakely talked about that as well today. On those counts, how does Bill C-46 stack up in your view?

The Vice-Chair (Mr. Guy Caron): Mr. Donihee, in 10 to 15 seconds.

Mr. Jim Donihee: We support the bill. The pipeline industry as a whole represents some 25,000 jobs across Canada, and $100-billion worth of revenues to our government from hydrocarbons moving through it on an annual basis. It is absolutely key to many of the social programs, with the industry paying $1.1 billion in property and corporate taxes last year that also served to fund countless social programs and the well-being of individual communities.... In no way should those numbers ever substantiate the fact that we would accept a spill. We're working very aggressively to make sure that does not happen.

The Vice-Chair (Mr. Guy Caron): Thank you very much.

[*Translation*]

Thank you very much.

I am going to ask the next questions. I have five minutes.

Mr. Donihee, I have a quick question about the definitions. When you use the term “release”, how is it specifically defined? Is it a legal definition?

Then, when you talk about 99.9994% of the oil getting to its destination at the moment, does that mean oil, natural gas and all the energy going through the pipelines?

[*English*]

Mr. Jim Donihee: I'll start first, sir, with your question on “release”. When we talk about that, I would say I'm not confident that it is defined within the regulation. When we talk about release by way of a definition, we talk about any unintentional release, *un échappement* of a product that was not intended on the part of the operating company. In other words, our mission in life is to keep the black stuff inside the tube, and we work deliberately to do that.

When you speak about the number that I reflected in my submission, Mr. Chairman, it was 99.9995, and that is the combined average for gas and oil. It differs by about 0.0001. The oil reliability factor is very slightly higher than that for gas, but both are almost impossible to measure in terms of the significance factor.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much.

As I have about three minutes left, I would like to direct some questions to Mr. Olszynski, Mr. Miron and, if I have the opportunity, Mr. Blakely and Mr. Donihee.

This bill looks generally like an improvement over the current situation, but with a number of its provisions greatly lacking in clarity. Could you tell me whether you believe the bill to be a step backwards in any sense?

[*English*]

Are you seeing any drawback from any aspect of this bill whatsoever? If you had one or two top amendments to actually clarify what's in this bill, what would be your choice?

Mr. Olszynski first.

[*Translation*]

Mr. Martin Olszynski: Okay. Thank you.

I will answer in English, because it will be quicker that way.

[*English*]

I would stick by my two amendments. I think that they, in a sense, just simplify the bill. I think they're achieving essentially the same objective.

The first one certainly is just to clarify the language around environmental damages.

The second recommendation—the requirement, or at least the authority, to make regulations for prescribing a process for assessing environmental damages—I think is very important. In fact, right now the legislation, if it does anything, the bill prohibits the Governor in Council from making such regulations with respect to the pipelines claims tribunal. I don't fully understand the reasoning for that, why the pipelines claim tribunal would be prohibited from essentially compensating for those damages. I think that part should be removed. That's proposed subsection 48.48(2). And again, it's regulations to set out a process that would benefit industry, government, all parties, followed essentially after the American model.

[*Translation*]

Mr. Guy Caron: What do you think, Mr. Miron?

[*English*]

Mr. Ian Miron: I would echo that need for some clarity around the environmental damages or the loss of non-use value relating to a public resource. As I mentioned in my presentation, I think some of these new tools the NEB can use to recover costs in the event of a spill should be made mandatory. I don't think it is an appropriate area for discretion in light of the fact that this bill is ostensibly to implement the polluter pays principle.

● (1650)

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much.

I will briefly turn to Mr. Blakely, but with a different question.

[*English*]

Mr. Robert Blakely: I'm going to take the coward's way out; I'm going to think about this for a little bit. There were three or four things that I thought, yes, could be clarified, but you asked for our top two. I would like to think about that and give you a reasoned answer.

The Vice-Chair (Mr. Guy Caron): Thank you very much. You can submit that to the committee.

I want to ask you a different—

Mr. Robert Blakely: We have a submission. The translator was a little later than he normally is.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): So we will accept it.

I have a quick question for you, because I only have 30 seconds left.

The projects that are currently on the table, Energy East, Trans Mountain, or Keystone, of course, are some of the biggest pipeline projects ever undertaken. This a different game compared with what was being done before.

How should we go about dealing with the security measures with projects that are huge compared with what existed before?

[*English*]

Mr. Robert Blakely: You know—

Mr. Jim Donihee: I'm not sure what you mean, sir, in terms of your reference to security standards.

The Vice-Chair (Mr. Guy Caron): How should the safety aspect be approached for projects that are much larger than they ever were in Canada? We're talking abut megaprojects compared to the situation before.

Maybe you are able to answer with a quick answer from Mr. Blakely.

Mr. Robert Blakely: You know, there are a significant number of jobs that were done here in Canada in the last little while, which most people don't pay much attention to, that are in the multi-billion dollar range.

With the whole issue of whether the jobs are so big that we need to have different procedures, I don't think so. I think we have some of the most sophisticated operators and contractors in the world here in Canada—

The Vice-Chair (Mr. Guy Caron): I need to stop you here, but thank you very much.

Mr. Robert Blakely: —and the best tradespeople, too.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): We continue our rounds of questions with Mrs. Perkins.

[*English*]

You have five minutes.

Mrs. Pat Perkins: Thank you.

In listening to all of this today, from the hands-on, to the learned legal side of things, we hear about Kalamazoo and lot and the lessons learned. It was probably one of the worst that's ever happened in the States, as we understand.

We've been very fortunate that our pipeline industry has done their due diligence and made sure that our pipelines have been secure. What environmental precautions have been brought forward as a result of those lessons learned in Kalamazoo? How much more effective has the safety regime been on the Canadian pipelines as a result of those lessons learned?

I'll go first to Mr. Blakely, and then ask Mr. Donihee, please.

Mr. Robert Blakely: I would say that the way in which pipelines are monitored and the technology that is used have significantly changed as a result of Kalamazoo.

Mrs. Pat Perkins: Good.

Mr. Donihee.

Mr. Jim Donihee: I would say that terrible incident is what we refer to as a defining moment. Many industries have them, be it the Space Shuttle Challenger accident or the terrible accident of two 747s colliding in Tenerife. That, like the tragedy of Lac-Mégantic, was a defining moment for the pipeline industry.

Since then we've undertaken a control room management practice that will be self-assessed across all of our members this year. They're challenging each other to make sure they're upping their game through the integrity first program, which is outstanding.

Another fine example is work that we commissioned with the Royal Society of Canada, one of the most renowned scientific bodies in the world, to undertake a study of oil-on-water properties so that we can quickly assess what it will do, and whether the recovery technology that we have is absolutely first-class, world-class, so that we can recover in the unlikely event that a spill ever occurs?

Mrs. Pat Perkins: Thank you.

My follow-up question is one that I've asked in most of these discussions. With respect to the environmental aspect of the pipeline crossings, has adding more valve shut-off areas close to highly sensitive environmental spots, or creeks, been part of the consideration of the installation of new pipeline or rehabilitation of existing pipeline?

● (1655)

Mr. Robert Blakely: Yes, but that's been coming over the course of years in any event.

Mrs. Pat Perkins: Okay.

Those would be shut-off valves that could be remotely triggered.

Mr. Robert Blakely: They're remotely operated; no one has to drive out to them.

Mrs. Pat Perkins: Okay, so it could be immediate and it would mitigate the damage environmentally.

I think that's a very big one for most communities. They don't want to see something happen in their waterways and have it affect their fisheries and all of those sorts of things.

I thank you so much for that part of the discussion because you are the first ones who have been able to answer that. Everybody is assuming, but today it was definitive, so I thank you.

Also, the fact that we now have the navy and the air force covered, and I heard some reference earlier to the starship *Enterprise*—I don't know where this is going today.... There seems to be a lot of people with strongly regulated environments who are working with this industry, and I think that's great.

Thank you very much.

The Vice-Chair (Mr. Guy Caron): You have about 30 seconds left.

Mrs. Pat Perkins: No, that was my time. It beeped.

I'm timing myself.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Ms. Perkins.

We'll move on now for the next five minutes with Ms. Duncan.

Ms. Linda Duncan: I have questions for Mr. Donihee.

I would presume that you think it's reasonable that the safety of pipelines is just one factor in public confidence in current pipelines and the building of new pipelines. It's good that we're bringing forward legislation that hopefully will ensure that there is increased or improved inspection and safety, and more expeditious responses and compensation.

However, I'm sure you and your association, your company members, have noted the task force report that was just issued, which is recommending an enhanced voice for first nations in all resource-based projects, including pipelines, and that they have a greater share in the benefits. Those appear to echo the Eyford report, which identified the failure on the part of the government to resolve first nation land claims as one of the key barriers to the approval of future pipelines.

I wonder if you would like to comment on that, and where you think pipeline safety legislation lies compared to the bigger issues that your companies are facing?

Mr. Jim Donihee: If I might use “confidence” as being somewhat synonymous with “trust” as a concept and say we're working very aggressively from the viewpoint of taking a look at that concept—credibility, reliability, and intimacy, be it relationships over self-interest.... From that aspect of relationships, it's vital that our companies have very strong relationships with everyone with whom they come in contact, be it all Canadians, with first nations absolutely inclusive within that.

We've done things like introducing a standard or an ethical protocol for land agents, so that their dealings are common and values based, and that the touch points are absolutely honouring that.

Clearly first nations have an absolute right to benefit, as do all Canadians, from the work that the pipeline companies are undertaking. On an individual basis, each of our member companies is striking up very strong relationships with first nations, and examining ways in which they can benefit far more directly from the work that the pipeline companies are undertaking.

We've had the privilege of meeting with the new national chief of the Assembly of First Nations. The relationship has been initiated in a very positive way, and we look forward to continuing that dialogue with them as we move forward.

Ms. Linda Duncan: Thank you very much.

I raised questions related to the following incident with both the board and the government.

Several years back, there was a significant break in an Enbridge pipeline at Wrigley, Northwest Territories. That incident was discovered by a trapper out on his line. In fact, he was alerted to it by a bear that was extremely upset.

It was clear in that case that neither the company nor the NEB identified that spill, so more oil came out. The first nation was extremely upset that nobody had contacted them in order to participate constructively in the process.

I'm wondering what lessons you can share with us of what you learned from that spill and the response, and whether you are coming forward with better processes to identify and respond to those spills and work with impacted communities.

● (1700)

Mr. Jim Donihee: I think what you would find from the lessons of that particular circumstance—I'm not fully familiar with the details—and that you're going to see in this day and age, as you would have seen in Manitoba most recently with the gas situation that evolved, is that the company is on the ground immediately. The individuals who are to be notified are very clearly delineated within the emergency response plans.

And to your last question, with respect to first nations who have a deep and abiding love of the land, the more deliberate involvement of first nations people in monitoring the environment around pipelines is very much planned, so the notification would occur more rapidly and their immediate involvement is also far more prominent than it might have been in the past.

As for the lessons learned, get to the press, tell people what's happening, demonstrate a very effective response and, as I spoke to a moment ago, understand the relationships that are key to sustaining trust and be open and transparent about how effectively you're responding.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Ms. Duncan, I am sorry, but your five minutes are up.

The floor now goes to Mrs. Block, also for five minutes.

[*English*]

Mrs. Kelly Block: Thank you very much, Mr. Chair.

I'm going to carry on where I left off after my last question.

But first I want to say once again that I appreciated a comment Mr. Blakely made when he said, “The truth is, we live here”.

Whether we are legislators or regulators or shareholders of a company, those who are building the pipelines or working for those corporations, we all live here and we all desire to ensure that projects are only approved if they are safe for Canadians and safe for the environment.

Prior to this legislation, our government brought forward new fines for companies that break our strict environmental laws. These fines were meant to be a tool that the NEB could use to ensure companies were penalized for contraventions of NEB regulations or orders.

The measures in this act build on those previous measures by enhancing and further clarifying these provisions. For example, companies operating major crude oil pipelines will now be subject to the absolute liability up to $1 billion. I want to note that still in the event that a company is found negligent or at fault, there is unlimited liability as well. This should eliminate any residual uncertainty about which party is responsible for cleanup costs and damages if an incident occurs.

Mr. Donihee, what has been your experience with industry, with members of your organization? Have you found that companies are willing to clean up and remediate after a spill, that they're willing to shoulder the costs?

Mr. Jim Donihee: My experience in a previous life, while at the National Energy Board as the chief operating officer and also now while now serving at the Canadian Energy Pipeline Association, is that the companies absolutely step up. I could not agree more with your point, that the member companies, which I have the privilege of representing, share in the desire to ensure that we operate the safest possible pipeline transmission system that will benefit our nation.

Yes, they have stepped up. My experience both while serving at the NEB and now on behalf of the association—and I think it's demonstrated through our support for this regulation as well—is that we accept the responsibility that comes to us, and we're doing everything in our power to make sure the government would never need to exercise it.

Mrs. Kelly Block: Thank you.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Mrs. Block, you have two minutes left.

[*English*]

Mrs. Kelly Block: I'll follow up on that.

It's been noted that we currently have a safety record of 99.999%. This legislation has been introduced to build on that and to improve on that.

Quickly, do you feel that this act will be strengthening the safety record that we already have?

● (1705)

Mr. Jim Donihee: I do believe that this act will complement the safety record and very strong commitment to zero incidents that the CEOs of the association have committed to with the work they are undertaking, because it is the right thing to do, around the integrity first program, very akin to the responsible care initiative, and a sincere desire on their part to do better than simply being compliant with regulations.

Mrs. Kelly Block: Thank you.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you, Mrs. Block.

We are now going to start our third round.

Mr. Trost, you have five minutes.

[*English*]

Mr. Brad Trost: Thank you, Mr. Chair.

One of the things that caught my interest in the earlier testimony was a bit of the discussion on the common law right to sue. We have a bunch of lawyers at the front of the room here and very few on the committee, so I would be interested in knowing what is normative in situations like this in Canada.

An illustration was given of how it took 20 years with the *Exxon Valdez*. Giving an American illustration to a bunch of lay people from Canada honestly doesn't mean a whole lot, because we know the Americans have a little bit of an odd system at times, even with the common-law correlation, etc.

Let's say that something did happen under this new legislation and it was actionable, something that would be suable. What sort of activity could you sue for under this current legislation? I know it's just guessing, but give the lay members of this committee some sort of idea of for how long and in what process that would wind through.

We're being asked to vote on legislation that involves legal processes. I'm a geophysicist, and we have a variety of various other skills around the table, so I'll be blunt that I don't totally get what all would be involved in that.

I have a bunch of people who are all leaning forward and saying "we can teach the guy something here", so who wants to start on this one and upgrade my legal education?

Mr. Martin Olszynski: Without saying that I want to do those latter things, I will speak to your question as best I can.

We don't currently have a lot of litigation in this context. There was a spill in Alberta recently, the Plains Midstream spill, and in that context there was regulatory enforcement done, but there wasn't any common-law action for environmental damages.

As I said in my comments, even though the Supreme Court of Canada has opened the door for the government to do that in cases such as Mount Polley, Plains Midstream, and Lac-Mégantic, governments have never done it in Canada to get those environmental damages.

Where there is private loss, which is really that first category, individuals would be able—whether under this legislation or without it—to sue for that private loss. This legislation doesn't change that.

I agree with Mr. Miron that it's essentially a codification of the existing scheme at common law, so we haven't seen where government bodies, provincial or federal, sue for those environmental damages. Those environmental damages essentially just become externalities. They essentially become a cost borne by ourselves, by our communities, and by our future generations.

Mr. Brad Trost: But do we see the private lawsuits going forward? These are fairly rare events. We were running through the numbers. I forget how many per year—

Mr. Robert Blakely: You need to have an interest in order to pursue a lawsuit, a direct interest. I cannot sue because someone has done something bad to someone else or has done something bad to the environment, because that is not my interest. If they flood my farm, then I have an interest.

Mr. Brad Trost: So in the experience of the events that have happened, are there very few people, then, who have a direct interest? Is that because Canada is a big country—let's face it—and these pipelines may mostly run on some version of crown land, etc.?

Mr. Martin Olszynski: There are remote areas, but I can actually give you one example, again from my home province. Right now in Alberta, there is a lawsuit involving Encana, which is being sued for contamination of groundwater in relation to fracking activities.

Right now, that lawsuit is running at 10 years. To give you a sense of what does go on and why I would press very strongly, for instance, for regulations setting out a process to assess these kinds of damages, it has essentially all been about preliminary motions, both by the government and by the two government parties that were also sued in this case and are being sued for negligence.

Baseline, in this context there's so much scientific uncertainty around the quantification of these things that there is a lot of room, then, for exactly the kind of drawn-out litigation we saw in the context of the *Exxon Valdez*.

● (1710)

Mr. Robert Blakely: The fracking example isn't a fair one, because some people say that fracking does cause this and other people say it doesn't. There's quite a divergence in opinion on that. If the pipeline ruptures and your lower forty is filled with oil, it's not as difficult—

Mr. Brad Trost: In a situation like that, it would be much quicker than if I had a situation...

Mr. Robert Blakely: Yes, well...

Mr. Brad Trost: I want to make it clear that I wasn't commenting at all on the merits of that litigation. I was referring to it to give you an example of something like that happening.

In terms of quantification of environmental harm, it may be a bit easier. I'm not prepared to say that, but I think generally speaking the quantification of these harms and their assessment is very difficult.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Olszynski.

Mr. Trost, thank you very much.

Monsieur Choquette, for five minutes.

[*Translation*]

Mr. François Choquette (Drummond, NDP): Thank you, Mr. Chair.

My thanks to the witnesses for being here, and for their testimony.

I missed the first hour of the meeting, so please excuse me if I repeat anything.

I come from Quebec, where people are very concerned about pipeline projects. At the moment, we have a TransCanada project and the reversal of line 9. In Quebec, people are directly affected by those projects.

We often hear that people seem to have difficulty expressing their views. People affected by the project say that they are having a hard time being heard.

The bill certainly contains some interesting elements. But it seems that some things are missing. For example, it talks about the right to consultation on environmental matters. There are environmental rights associated with the consultations, such as those with First Nations. I feel that also applies to Canadians in general.

Does the bill meet the needs for consultation? The Canadian Environmental Assessment Act has been amended to make consultations on environmental assessments more difficult.

Mr. Olszynski, Mr. Miron, can you tell us more about how the right to consultation will be respected? What are the difficulties in that regard?

[*English*]

Mr. Ian Miron: I don't see a whole lot of consultation within this bill itself. I am aware that there are some extra efforts outside of the legislation that have been proposed by the government with respect to consultation with first nations. This bill isn't an environmental assessment bill. This is a liability bill. From my perspective, that's what this bill is about. It's about polluter pays. I don't see a whole lot of room for consultation within this bill.

Mr. Martin Olszynski: I would echo those comments. I think, in some cases, where there is a discretion to make regulations, for instance.... Regulations are inherently consultative and when regulations are published in the *Canada Gazette* there will be public comment periods, and those kinds of things. To that extent, some of the regulations that are called for here will involve further public consultation, and that's good.

I think the more those regulations are promulgated and prepared, the better.

[*Translation*]

Mr. François Choquette: Mr. Donihee, you put forward some recommendations. In your fourth recommendation, you say that, for the National Energy Board's new powers to be effective, the regulatory agency needs a better funding model. It seems that its current allocations and the Treasury Board constraints on the way in which they are used are too restrictive and do not allow its expertise to be maintained or enhanced.

Can you tell us more about that recommendation? What do you mean by it exactly? What are the improvements needed?

Mr. Jim Donihee: Thank you for the question, Mr. Choquette.

[*English*]

I would say first, having had the privilege of serving at the National Energy Board as the chief operating officer in a previous life, that the NEB is an independent employer. There is a degree of independence about it.

The finances that it receives for its operations are approximately 90% cost recovered from industry, so I think you would find that industry, as I said in my testimony, clearly recognizes the benefit of a strong regulator and how how essential it is.

Where the NEB suffers, quite frankly, is the imposition of standard pay practices that are commonplace in the public service, but which don't serve the NEB very well when it resides in downtown Calgary and is competing for extremely qualified technical talent. It finds itself in a difficult position to compete for, in terms of its compensation basis and hiring practices, talent and to retain it.

I think that one of the strongest recommendations that I could offer is to ensure a strong, well-financed, and flexible National Energy Board to provide the quality of oversight, capability, and competence that Canadians expect of it.

● (1715)

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Choquette.

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

Hon. Geoff Regan: Thank you, Mr. Chair.

My thanks to the witnesses here with us today and the witness joining the meeting by videoconference.

[*English*]

One of the things that I want to ask about is funding for the NEB, because according to the 2015-16 main estimates, the NEB's funding for the regulation of pipelines, power lines, energy development, and so forth has actually decreased from $81.7 million in 2013-14 to $76.8 million in 2015-16. That's a reduction of some $4.9 million, or 6% thereabouts.

Given the fact that Bill C-46 is actually giving quite a bit more responsibility to the NEB, and more authority, do you think it's strange that its budget is shrinking instead of increasing? How do you think this will impact public confidence in the NEB's ability to make sure our pipelines are the safest in the world?

Mr. Donihee, do you want to start?

Mr. Jim Donihee: I'm sorry I'm not familiar with the trend lines in their estimates. I think it is best that you perhaps engage with NEB staff to that extent. As I did say a moment ago, as these additional responsibilities come to the NEB, clearly there's to be a requirement for additional funding especially for greater flexibility in terms of how they're able to attract and retain highly qualified staff in a very competitive environment even during a downturn.

Hon. Geoff Regan: Thank you.

Mr. Blakely.

Mr. Robert Blakely: My experience in life is you do less with less. If you want to give people more responsibility and expect a higher level of service to serve Canadians better, resource it.

Hon. Geoff Regan: That's true.

Mr. Miron.

Mr. Ian Miron: I can't disagree with any of those comments. Cutting funding and then expecting more just seems counterintuitive.

Hon. Geoff Regan: Mr. Olszynski, do you have anything else to add?

Mr. Martin Olszynski: I agree with what the other witnesses have said about that.

Hon. Geoff Regan: Let me ask you about the risks to taxpayers in the case of a catastrophic spill. I ask because currently, of course, if pipeline company X were unable to pay the entire cost associated with the spill, some things could in fact go unpaid. Under Bill C-46, we would have a regime where the consolidated revenue fund comes over to the taxpayer. It would be called upon to cover unpaid awards.

The question is, I guess, whether it's fair to taxpayers to carry this risk, although there seems to be some mechanisms to allow the NEB to recover any compensation that might be paid out. Do you think this aspect of the bill should be amended, and if so, do you have any suggestions?

Mr. Olszynski, I'll start with you.

Mr. Martin Olszynski: Essentially, in thinking about these provisions, they are very similar to what we have in the United States and the Superfund there. The goal is really to mobilize money quickly, even where the operator cannot or refuses to do so, to deal with those issues. I think the one difference maybe is around the discretionary nature in how this fund will be replenished. I think in the United States, there's essentially a levy placed on operators who fit within a certain regulated community. We see some of that here too, but it just seems to be a bit more discretionary.

So, if you wanted to make sure that money would in fact be replenished, that the general account of Canada would...and that Canadian taxpayers would not essentially be subsidizing these kinds of incidents, then you would just make that recovery mandatory. You can maybe leave some flexibility around the mechanisms, but you make the recovery mandatory.

● (1720)

Hon. Geoff Regan: I have one minute.

Does anyone else want to comment? Would you like to raise your hand if you'd like to add a comment on that?

Mr. Ian Miron: I would just comment that I agree with those comments.

Mr. Robert Blakely: I would say one thing differently. A pipeline company has assets, whether it's the pipe in the ground or whatever else, or the contracts of cartage or whatever they're called. Those should be exigible.

Hon. Geoff Regan: Thank you very much.

The Vice-Chair (Mr. Guy Caron): Thank you very much, Mr. Regan.

We have time for one last set of questions.

Ms. Crockatt.

Ms. Joan Crockatt: Thanks so much, Mr. Chair.

I just wanted to go a little bit further, I guess. We've talked a lot about the risks to Canadians and how this bill prevents Canadians from being liable for the risks in the unlikely event of a pipeline spill, but I wanted to talk a bit about the benefits to Canadians of this legislation allowing this activity to continue.

I want to ask you, Mr. Blakely, if I could, to talk about how you see the Keystone XL pipeline. Should it go ahead? What benefits may there be to Canadians?

Mr. Robert Blakely: Basically, it means we have to build and maintain a resource that is capable of delivering 800,000 barrels a day to the gulf coast. I would very much like to build that.

Ms. Joan Crockatt: What would be the benefit to Canadians of being able to do that?

Mr. Robert Blakely: It would be jobs, security in terms of social programs, and the ability to fund what we do, to train a subsequent workforce, and to have economic security for North America. Those are pretty laudable goals. We still import oil in significant amounts. Maybe we don't have to do that anymore. Maybe we could be Fortress North America and—

Ms. Joan Crockatt: Get us off Algerian oil?

Mr. Robert Blakely: Well, [*Inaudible—Editor*] knew there are a lot of people who don't like us and our way of life.

Ms. Joan Crockatt: Mr. Donihee, could I ask you the same question? What kind of jobs flow from a project like Keystone, and how does that fit into our conversation here today?

Mr. Jim Donihee: Ultimately, whether it be Keystone...and I would suggest that the other projects, which are hoping to flow either east or west, are even more important to us because the reality is that we are currently suffering a loss in the order of $50 million per day in terms of full value for our resources that are flowing to one single market—albeit to our good neighbour to the south, which is enjoying that subsidy on Canada's behalf at the moment. As Mr. Blakely has said, it is crucial that, as a nation, we create options for ourselves by having access to other markets so that we can be sure we are getting full value for our resources.

Sixty billion dollars in projects are on the table over the next many years, and 25,000 jobs currently in the sector. You heard Mr. Blakely speak to the very significant numbers of jobs through the construction phases, at least. Last year, $100 billion in resources were transported, even at that discount, which provides tremendous contributions to the social fabric of our nation. We need to find a way to get there. It is incumbent upon government to create the circumstances, and for business to do it right.

Ms. Joan Crockatt: I think that satisfies my questioning. Thank you, Mr. Chair.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Ms. Crockatt.

[*English*]

You have one quick question.

Ms. Linda Duncan: This issue has come up quite a bit from all of the witnesses. I've really appreciated all of your testimony. This bill provides for the promulgation of a lot of regulations. Without those regulations, we still have a lot of legal uncertainty on exactly what the regime will be.

I put the question to the government and to the National Energy Board of whether or not they have already been conferring, and with the energy sector, which it seems would be logical, on the beginning of drafting the regulations. When I was assistant deputy minister, it was my understanding that when you are coming forth with a whole new legislative regime, you are also thinking about what regulations to implement that put substance to the bill, and then what kind of staffing and training you are going to need in order to implement that new regime in a constructive and effective way.

I guess I would like to hear from any of you. I appreciate the comments by Mr. Donihee, which were very honest. It is nice to hear that you once worked at the NEB, so you know what is needed.

I would just like to know if you agree, or if in any way you concur with my concern. I can only go on the basis of what the government and NEB have told us, and that is that no work has been done yet on these regulations. Does it not make sense that they ought to be expedited in a consultative process to promulgate these necessary regulations so we finally know what the new regulatory regime will be?

● (1725)

Mr. Robert Blakely: The sooner we get on with it, the better off we are.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Mr. Donihee, did you want to say something?

[*English*]

Mr. Jim Donihee: We have strongly indicated our support throughout the drafting of the bill to this point. Like a wide spectrum of stakeholders, we have the privilege of being consulted. We are eager to see it passed, and we would very much look forward to continuing consultation in terms of drafting the actual regulations.

Mr. Ian Miron: [*Technical difficulty—Editor*]...the sooner the better, to fill in these gaps, including with respect to environmental damages.

I would also urge public consultation in the development of those regulations.

[*Translation*]

The Vice-Chair (Mr. Guy Caron): Thank you very much, Ms. Duncan.

Mr. Olszynski, Mr. Miron, Mr. Blakely and Mr. Donihee, thank you for spending this time with us and sharing with us your expertise and your thoughts.

[*English*]

Thank you very much to all members of the committee. We will reconvene on April 21 for the beginning of our clause-by-clause consideration of Bill C-46.

Have a nice couple of weeks.

The meeting is adjourned.