



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 2nd SESSION

Standing Committee on Environment and Sustainable Development

EVIDENCE

NUMBER 010

PUBLIC PART ONLY - PARTIE PUBLIQUE SEULEMENT

Wednesday, December 9, 2020



Chair: Mr. Francis Scarpaleggia

Standing Committee on Environment and Sustainable Development

Wednesday, December 9, 2020

• (1535)

[English]

The Chair (Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.)): Good afternoon. Welcome to our meeting, which begins the study on Canadian Environmental Protection Act, CEPA, enforcement.

Before we start, I would just like to read out the second report of the subcommittee on agenda and procedure of our committee and have the committee adopt it, because it essentially lays the groundwork for today's meeting.

Your subcommittee met on Thursday, December 3, 2020, to consider the business of the committee and agreed to make the following recommendations:

That, for its meeting of Wednesday, December 9, 2020, in relation to the enforcement of the Canadian Environmental Protection Act study, the committee invite Mr. Amir Attaran from the University of Ottawa, Mr. Muhannad Malas from Environmental Defence and a third witness at the discretion of the Chair.

We have today with us three witnesses. I'm told Mr. Attaran was not able to make it, but we have David Wright, retired Crown prosecutor in Ontario. We have Muhannad Malas, program manager, toxics, from Environmental Defence Canada; and Ben Sharpe, senior researcher and Canada lead at the International Council on Clean Transportation.

[Translation]

As per our usual procedure, you may of course use the official language you prefer.

When you are not addressing the committee, please put your mike on mute.

[English]

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): I have a point of order, Mr. Chair.

Have we not ratified the subcommittee report so we can have the hearings today?

The Chair: Yes, sure. I sense that there's consensus, but—

Mr. Dan Albas: If so, I'll move it.

The Chair: Okay, yes, my mistake. I apologize for that.

Mr. Dan Albas: If you ask for unanimous consent, I'm sure we'll get it.

The Chair: Yes. Is there unanimous consent?

Some hon. members: Agreed.

The Chair: Seeing no objections, the second report is adopted.

Thank you, Mr. Albas.

We'll start with Mr. Wright for five minutes, please.

Mr. David Wright (Retired Crown Prosecutor in Ontario, As an Individual): Good afternoon, honourable Chair and committee members.

My name is David Wright. I'm a recently retired assistant Crown attorney employed by the Ministry of the Attorney General for 32 years. I am currently litigating for Ecojustice, an environmental organization based in Vancouver.

On March 10, 2017, in Detroit, Michigan, Volkswagen pleaded guilty to three criminal felony counts and was fined \$2.8 billion for cheating on emissions tests mandated by the U.S. Environmental Protection Agency in regard to 590,000 diesel-engined vehicles. It was a fine of \$4,745 per vehicle.

On January 22, 2020, Volkswagen pleaded guilty to violations under the Canadian Environmental Protection Act and was fined \$196.5 million related to the installation of illegal emission software in 128,000 vehicles. This equals a fine of \$1,535 per vehicle.

Volkswagen received special procedural treatment in court.

Let me explain briefly what normally happens when federal charges are laid. I'd like to note that the Criminal Code rules apply to environmental prosecutions.

Once a charge is laid, the accused attends court for a first appearance, normally within three to four weeks, allowing time for the Crown to prepare disclosure. On this first appearance, disclosure is then provided to the defence lawyer.

The next step is a formal meeting between the Crown and the defence, called a Crown pretrial. In serious cases, a judicial pretrial, or JPT, must be held. This is a meeting between a judge, the Crown and the defence to determine if the case can be resolved or whether the trial issues can be narrowed to save court time. Then either the case is resolved or a trial date is set. If a case is resolved, the victim will be advised before the plea proceeds. Resolution for these types of offences normally takes between three and five months.

What happened with Volkswagen?

Sixty charges under the Canadian Environmental Protection Act were laid on December 9, 2019. The first appearance was December 13, 2019. In other words, it was four days later.

The agreement between the Crown and the defence was for Volkswagen to enter a guilty plea and be sentenced on that same day, as acknowledged in the court transcript of December 13, 2019.

Differing from any usual prosecution, Volkswagen did not have to repeatedly attend court, publicly obtain disclosure, publicly set a Crown pretrial and publicly set a judicial pretrial, like every other accused in Canada has to.

There is nothing on the court record or information to show that Volkswagen ever received disclosure. There is nothing on the record to show that Volkswagen ever attended a JPT. As required, the court record or information would record these events to maintain an official accounting of all that happens once a charge is laid.

It is inconceivable that Volkswagen pleaded guilty and agreed to a \$196-million fine without receiving disclosure. With just five days between the laying of the charge and the scheduling of the plea, the only explanation is that Volkswagen received disclosure before the charges were laid on December 9. This is a major breach of protocol.

The reason this is significant is that prior to December 9, the Crown still had the discretion to determine which charges, if any, should proceed. To be clear, it was in the Crown's discretion to lay Criminal Code conspiracy charges against Volkswagen, as was done in the United States, not the less serious charges found in the Canadian Environmental Protection Act.

It is also inconceivable that the plea went ahead without any pretrials. While there is no written court record of either a Crown pretrial or a judicial pretrial taking place, both had to have occurred, as it would be negligent on both parties not to hold these meetings. Given the timing, the judicial pretrial may have occurred before the charges were laid.

The 60-count plea was scheduled for December 13. However, the plea stalled when Ecojustice asked that victims be allowed to provide a community impact statement, pursuant to section 722.2 of the Criminal Code.

The case adjourned to January 22, 2020, for submission of the impact statements, the plea and the sentence.

• (1540)

What is a community impact statement?

Even though Environment Canada had been locked in litigation with Ecojustice for years regarding Volkswagen's unlawful conduct, it told no interested parties of the date the charges were laid or that a plea was pending December 13, 2019. No environmental or health organization had time to prepare any type of response, including a community impact statement.

On January 22, 2020, contrary to the mandatory provisions of the Criminal Code, the Crown unilaterally disallowed community impact statements presented by Ecojustice, saying it was "untested" expert evidence—

The Chair: Thank you, Mr. Wright.

We're a bit over time, but there's a lot of material in your presentation for the questions. I'm sure your presentation will elicit many questions.

Before we go on to the second witness, I would just like to mention to members that at around 5:15 or so I'm going to ask the committee to go in camera to consider the third report from the steering committee regarding the work outline for the report on zero-emission vehicles.

Mr. Malas, you have five minutes.

Mr. Muhannad Malas (Program Manager, Toxics, Environmental Defence Canada): Good afternoon.

Thank you, Mr. Chair, for the invitation to speak to you about this important matter today.

My name is Muhannad Malas. I'm the toxics program manager at Environmental Defence.

Environmental Defence is a leading Canadian environmental advocacy organization that has for over 30 years worked with government, industry and communities to safeguard our fresh water, decrease Canadians' exposure to toxic chemicals and build a clean economy.

Environmental laws are only as effective as their enforcement. In the case of the Canadian Environmental Protection Act, proper enforcement means holding accountable polluters who put the health of Canadians and their environment in harm's way.

In 2015, Volkswagen was caught installing a cheat device in more than 11 million diesel cars worldwide. That device lowered emissions when the vehicle was operating in test mode, but once on the road, they emitted up to 35 to 40 times the permitted levels of harmful nitrogen oxides, a pollutant associated with many deaths, according to Health Canada, as well as cancer and other illnesses.

In Canada, 128,000 of these rigged vehicles were imported and sold during a period of seven years.

For what is arguably one of the worst environmental crimes ever committed in Canada, the government's enforcement, by any reasonable measure, was hesitant, weak and inadequate.

After launching its investigation in September 2015, it took more than four years for the federal government to charge and prosecute the company. This is despite a guilty plea agreement between Volkswagen with the U.S. federal authorities in January 2017 that precluded the company from retracting its admission of guilt in other jurisdictions. This is also despite testing done in Canadian government labs in Ottawa being used as evidence by the U.S. government.

Troubled by the lack of public progress made by the government, in July 2017, just less than two years after the investigation launched, I submitted a CEPA section 17 request to the Minister of the Environment and Climate Change to open a transparent investigation of Volkswagen's violations. Citing the government's ongoing investigation, the minister refused to investigate three of the violations I outlined in my request, including the import and sale of rigged vehicles. This essentially meant that the government was able to continue its investigation without the obligation to provide progress updates.

For the investigation that the minister agreed to open, which covered the continued sale of 2015 model cars that received a half-fix, I received 12 progress update reports over the following three years that offered little to no meaningful information about the government's progress.

In the end, after more than four years, Canada reached a plea deal with Volkswagen that appeared to be pre-negotiated prior to any charges being laid and fined the company \$196.5 million. While this is the largest fine ever levied in Canada, the amount pales in comparison to what the company paid in the U.S. and could have been much higher had the charges not been packaged in a way to reduce the maximum penalty. By contrast, the U.S. charged, prosecuted and fined Volkswagen more than \$10 billion within 20 months.

In our view, the federal government's failure to provide updates about its progress within the four plus years of its investigation reflects a failure to respect the spirit and intent of CEPA and the public participation rights it grants Canadians.

The Volkswagen investigation underscored a number of glaring problems in the enforcement of CEPA that were highlighted in this committee's 2017 review of the act.

One key problem, for example, is that CEPA's citizen enforcement provisions, which allow concerned citizens to bring an environmental protection action, EPA, against a person or company that has committed an offence, are overly onerous and riddled with barriers that are effectively insurmountable.

For example, in order for a citizen to bring an EPA, they must first request an investigation by the minister and then demonstrate that the minister failed to conduct the investigation or that their response was unreasonable. Additionally, a concerned citizen must demonstrate that a violation is responsible for "significant harm to the environment" and run the risk of having to pay substantial cost awards if they are unsuccessful. As a result of these barriers, no citizen suits have been commenced or completed since the enactment of CEPA in 1999.

As the government proceeds with developing a bill to modernize CEPA, as promised in the government's Speech from the Throne, we urge Parliament to adopt the committee's 2017 recommendations to strengthen CEPA in a manner that removes these barriers and improves public participation in the enforcement of the act.

Thank you very much for your time. I look forward to your questions.

• (1545)

[*Translation*]

The Chair: Thank you, Mr. Malas.

We will now hear from Mr. Sharpe.

Mr. Sharpe, you have five minutes.

[*English*]

Mr. Ben Sharpe (Senior Researcher and Canada Lead, International Council on Clean Transportation): Thank you very much, Mr. Chairman.

To the Standing Committee on Environment and Sustainable Development, good afternoon. Thank you very much for the opportunity to provide remarks regarding charges brought against Volkswagen in December 2019 under the Canadian Environmental Protection Act.

My name is Ben Sharpe, and I am a senior researcher and Canada lead for the International Council on Clean Transportation, ICCT. We are a research organization that is focused on providing technical information to support government decision-making on policies for leading vehicle markets around the world.

Today, I'll make comments regarding the essential elements of the robust vehicle emissions regulatory program and the breakdowns that led to the Dieselgate scandal. Then, I'll highlight the large discrepancy between the Volkswagen penalties in Canada as compared to the United States, and how this represents a significant detriment to Canada. Finally, I'll summarize some of the ways in which Dieselgate has fundamentally altered the course of the global auto sector, and has been a significant contributing factor in the accelerated transition to vehicle electrification.

A strong vehicle emissions regulatory program requires that vehicles are tested under a wide range of operating conditions and that there are specific protections against cheating, so how did Volkswagen and so many other manufacturers cheat the system? Well, simply put, they designed vehicles that tricked regulators by performing well in the laboratory and meeting all of the required emissions levels. However, as soon as these vehicles sensed that they were in actual real-world driving conditions, their control algorithms drastically ratcheted up nitrogen oxide, or NOx, emission levels so that the vehicles would get better fuel economy. These so-called "defeat devices" were at the heart of the Dieselgate scandal.

Since we first uncovered the defeat device issue in 2014, the ICCT has been at the forefront of research and policy analysis to identify the full extent of the cheating issue and to present concrete solutions to policy-makers to strengthen vehicle regulations and improve real-world emissions performance.

The ICCT has developed step-by-step guidance for helping regulators identify vehicles with defeat devices, which can be challenging since the devices are embedded with sophisticated computer code.

The ICCT is the world's leading research organization with regard to vehicle compliance and enforcement and real-world emissions evaluation. As an addendum to my testimony, I've included a list of roughly 30 papers, consultant reports and blog posts that we have published on these topic areas.

In addition to designing vehicle emission regulations to explicitly close software algorithm loopholes, it's equally important to have sufficient enforcement provisions and penalties in place to deter manufacturer malfeasance. The discrepancy between the fines collected from Volkswagen by the U.S. and by Canada is significant and deserves further scrutiny, which is why we applaud the committee for taking up this investigation.

Altogether, Volkswagen's fines and penalties in the U.S. total roughly \$32 billion Canadian, as compared to \$196 million Canadian in Canada.

With roughly 580,000 and 128,000 guilty vehicles sold in the U.S. and Canada, respectively, this works out to about \$55,000 per vehicle in the U.S. versus \$1,500 per vehicle in Canada. More transparency is needed to determine how Canada came to a settlement that has resulted in significantly lower penalties on a per-vehicle basis versus the U.S.

In response to the Dieselgate fallout over the past five years, diesels are now much less attractive to both consumers and manufacturers. For example, in Europe, the diesel market share has fallen over 40% since 2015. Given the additional costs associated with re-engineering diesel vehicles to comply with increasingly stringent emissions requirements, several manufacturers have divested from diesel technology and have instead made aggressive pivots towards electrification. Not coincidentally, Volkswagen is leading this rapid transition to electric drive, and it announced in 2016 that electric vehicles will make up 25% of its global annual sales by 2025.

Another way in which Dieselgate has turbocharged the transition to electrification is that a significant portion of the Volkswagen settlement funds, nearly \$3 billion U.S., are specifically earmarked to support U.S. states with programs that accelerate electric vehicle development.

- (1550)

In summary, Dieselgate has illuminated the critical importance of having well-designed regulations as well as robust compliance enforcement and penalty provisions to ensure that emission reductions are achieved in the real world and not just in the laboratory.

While the Canadian government's action against Volkswagen represents the largest environmental fine in the country's history, this committee is very well justified to probe the manner in which the settlement was reached.

Thank you very much for the opportunity to provide comments.

[*Translation*]

The Chair: Thank you, Mr. Sharpe.

Your testimony is related to the study we just concluded. I congratulate the committee for organizing its meetings around related topics.

We will now begin a round of six-minute questions.

Mr. Albas, you have the floor.

[*English*]

Mr. Dan Albas: Thank you very much, Mr. Chair.

I would like to thank our witnesses for taking the time to be here to discuss this important issue with us today.

I'm going to ask a general question of each witness. Maybe we will go from Mr. Wright to Mr. Malas to Mr. Sharpe. I would like to have a fairly succinct answer with just maybe a little bit of follow-up.

Do the witnesses here today believe that the penalties were commensurate with the crime, and if not, was that the fault of the way the law is currently structured or how the government executed this?

Mr. David Wright: I haven't looked closely at the environmental legislation with this issue in mind, so I don't think I could properly advise the committee with respect to this question.

Mr. Muhannad Malas: From our perspective, the perspective of Environmental Defence, I think, as I outlined in my statement, is that there are a number of gaps within the legislation, CEPA, that have enabled the investigation to proceed in the way that it did. These issues were highlighted and underscored in the review by the ENVI committee in 2017 that resulted in a number of recommendations on how the enforcement provisions could be improved.

From our perspective, the legislative framework is a key problem, and the fact is that we weren't able to get much information from the government when the investigation was happening, which was due to the fact that the legislation did not compel the government to provide that information to us. I'm not able to answer the second part of the question about whether there were other factors at play, because I don't have the information at hand.

- (1555)

Mr. Ben Sharpe: I will certainly defer to Mr. Wright and Mr. Malas in terms of the legal procedure and legislative structure of the Canadian Environmental Protection Act.

From the ICTT's perspective, looking at the penalties that were determined in the U.S. in California and looking at the magnitude of the fines that were levied for Canada, it's certainly a very large discrepancy, and at least to us points to a breakdown in the procedural way in which these fines were determined. For Mr. Wright and Mr. Malas, it seems like there has been a lack of transparency throughout the process.

Mr. Dan Albas: Thank you.

I think I will go back to Mr. Malas, because you do seem to have a lot of track on exactly how these investigations are done.

The info we received from our analyst shows that CEPA investigations totalled 4,915 in the final year of the last Conservative government. Since then, it has declined every single year while the current government's in power. I think last year it was only around 1,600.

Why do think these investigations have declined so considerably in the last few years?

Mr. Muhannad Malas: To answer this question, I would point to a number of reports that were published by the Auditor General's office, by the commissioner of the environment and sustainable development, which highlighted that. So far, there have been three reports that looked into enforcement: a 2009 report, a 2011 report and a 2018 report. Some of the findings have been consistent in terms of the way that Environment and Climate Change Canada has invested resources and capacity in enforcing its regulations.

The last report that came out in 2018 showed that 2,000 of the 10,000 inspections and enforcement actions conducted by the department were targeting dry cleaning businesses. These are mostly small to medium-sized businesses and the audit showed that there was no prioritization of risk in terms of how the department allocated its resources. Many very important regulations, such as the prohibition of toxic substances regulations that prohibit 26 substances, did not receive one inspection in 2018.

Once again, I want to emphasize that some of these findings have been consistent throughout the audits that were done by the environment commissioner. There's also an issue of resources and funding, and we have provided recommendations over the years in terms of increasing the funding going towards the enforcement department within ECCC.

The Chair: Mr. Albas, you have time for a comment.

Mr. Dan Albas: Thank you. I'm glad you raised that about the Auditor General and the environment commissioner. Do you believe the government is adequately funding these areas?

It seems to be something you've referenced a few times.

Mr. Muhannad Malas: I don't believe the government is funding these areas and enforcement actions adequately.

The Chair: Thank you.

We'll go to Mr. Schiefke, for six minutes.

Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.): Thank you very much, Mr. Chair.

I add my thanks to all our witnesses for being here today and for their work in helping to protect Canadians from environmental challenges and issues that might be consequential to them.

This is a broad study on how we can improve upon enforcement mechanisms within CEPA and give more powers to the government to be able to better protect Canadians. Given that we haven't had a briefing by officials yet on the full scope of enforcement operations, I guess I'll ask my questions more broadly.

My first question would be for Mr. Sharpe.

We know that countries around the world have a wide range of enforcement regimes to ensure the safety of their populations.

Based on your experience, could you point to a few examples of success stories across the world where innovative enforcement practices led to greater protection against harmful substances, for example, or greater protections to the population in general?

● (1600)

Mr. Ben Sharpe: That's an excellent question. This has become a huge part of our focus as an organization since 2014 and 2015, when all these revelations started to come to the fore. We've been working very closely primarily with regulators in the European Union. As you might know, the definition and use of defeat devices is technically not illegal in the European Union. One of the biggest efforts that we've put in over the past few years is to ensure that these devices cannot be used in that jurisdiction.

In terms of innovative ways to catch vehicles that might be cheating, we've developed several methods, including remote sensing. We have several documents that I've shared with the committee that provide additional details as to how those methods can be employed. We're very excited to see many of the governments that we work with start to use these remote-sensing methodologies to be able to test a very large number of vehicles, very cost effectively.

In the past, it was very expensive to gather data from vehicles in the real world, given the need to put expensive equipment on the vehicles. That's no longer the case when doing remote sensing. We, as an organization, are very optimistic that remote sensing is going to be the primary method by which governments can collect a very large amount of vehicle real-world emissions data and then link that to actual compliance and enforcement regimes.

Mr. Peter Schiefke: Thank you for that, Mr. Sharpe.

The next question I have is one relating to chemicals management, which is a big part of CEPA and the chemicals management plan.

Mr. Malas, Canada has committed to implementing the 2030 agenda and its sustainable development goals, SDGs, and 12 of them aim to ensure sustainable consumption and production patterns. Target 12.4 is to achieve by 2020 the environmentally sound management of chemicals and all wastes throughout their life cycle in accordance with agreed international frameworks and significantly reduce their release to air, water and soil to minimize their adverse impacts on human health and the environment.

What role would you say CEPA has in getting us closer to achieving 12.4 and how can we do a better job at it? What can we do within CEPA to achieve that?

Mr. Muhannad Malas: I think CEPA is the most critical legislative tool we have to achieve that target. I think the opportunity that we have today with modernizing CEPA can bring us forward to achieve not only those global targets but also our domestic targets. One of the issues we've had in our chemicals management plan has been the fact that we have not measured performance. This has been shown by the Auditor General's reports over the years. We have not seen whether our chemical management has led to meaningful reductions in exposures and in risk to the environment. When it comes to some of the major issues and gaps that we have within CEPA when it comes to chemicals management, it's the fact that we do not require the risk assessment regimes and our risk management and regulatory regimes to consider vulnerable populations and marginalized communities that are most disproportionately affected by toxic substances. Some of the vulnerable populations could include biologically or physiologically vulnerable communities, whether it's pregnant women and children or socio-economically marginalized communities.

If we don't address those communities and provide them with the protections adequately, then we're not going to be able to meet those targets domestically and globally at this time.

• (1605)

Mr. Peter Schiefke: Mr. Malas, you'd be fully supportive of the implementation of the aspects of the 87 recommendations that deal specifically with those areas that you see as gaps that need to be filled.

Mr. Muhannad Malas: I would strongly support those recommendations by the ENVI committee in 2017. We see them as a blueprint for how CEPA could be modernized and brought to the 21st century, because we still have legislation from 1999.

[Translation]

The Chair: Thank you.

Ms. Pauzé, you have the floor for six minutes.

Ms. Monique Pauzé (Repentigny, BQ): Thank you.

I'm going to continue in the same vein as Mr. Schiefke. So I will also be addressing Mr. Malas.

Mr. Malas, with regard to the 87 recommendations and the enforcement of the Canadian Environmental Protection Act, what are the three most pressing problems we should prioritize in the context of the current climate emergency?

[English]

Mr. Muhannad Malas: It's a tough task to reduce 87 recommendations to three, but I can definitely take on the challenge. The first top priority would be to ensure that vulnerable populations and marginalized and racialized communities, especially indigenous communities, are adequately protected from toxic substances and pollution so those recommendations that pertain to vulnerable populations are critical. Very related to that is recognizing Canadians' right to a healthy environment within CEPA, which would be the first time that a federal legislation would have a recognition of that right. Those two go hand in hand. Protecting vulnerable populations and recognizing the right to a healthy environment are two sides of the same coin.

The second priority is around how we risk-assess chemicals. We have a "one chemical at a time" approach, and we have tens of thousands of chemicals on the market. We need to be smarter. We need to go where the best practices are globally in looking at classes of chemicals, cumulative effects, and ensuring that we're addressing exposures in a holistic way as opposed to an individualistic way.

The third one would be around enforcement. We should ensure that we have civil enforcement mechanisms that enable the public to participate in decision-making and enforcement.

[Translation]

Ms. Monique Pauzé: Thank you very much, Mr. Malas. You are on my wavelength when you talk about chemicals, and therefore about pollution, and its effects on human health.

My other question is for Mr. Sharpe.

I would like to congratulate you on your presentations at the Electric Mobility Canada conference. I learned a lot listening to you.

Towards the end of 2017, your organization published a report on vehicle emissions compliance and enforcement programs in 14 markets. It showed that Canada is doing poorly.

Since the start of the Volkswagen investigation, what steps has Canada taken to improve its compliance and enforcement activities?

Please answer briefly, because I have another question for you.

[English]

Mr. Ben Sharpe: I don't know specifically what actions Canada has taken that would have been different from the United States. As you well know, the Canadian and the U.S. federal regulations are very much tied, aligned and intentionally harmonized, given the alignment across the markets. I do not know of any specific actions Canada has taken over and above, in terms of its compliance and enforcement actions.

[Translation]

Ms. Monique Pauzé: Thank you.

Let me come back to the environmental reparations aspect. You mentioned it in your statement. For example, in the United States, given the fact that Volkswagen was against anything that could protect the environment, it had to give money. So there was a remedial aspect. With these sums of money, work had to be done on zero-emissions vehicles. This is the link we make with the previous motion.

You and your organization have an international vision. Do you think that the reparations aspect is being developed in all countries, when fines are imposed?

• (1610)

[English]

Mr. Ben Sharpe: From the ICCT perspective, we believe that mobilizing these penalty funds to move towards electric drive is a best-case scenario. Certainly for electric vehicles of all types, both light and heavy-duty, there's going to need to be a lot of policy support and a lot of sustained long-term funding in order to jump-start this transition.

It really is, at least from our perspective, a win-win. You certainly want to penalize malfeasance and cheating. That's pivotal as a deterrent. However, being able to put those funds towards something that is really critical in terms of protecting the climate is a really big lost opportunity for Canada, in our minds.

One of the things we've been looking at quite a bit over the past two years is Canada's role in the electric vehicle transition. It's falling behind some of the other auto-producing countries—at least currently. Canada needs to be doing all it can to make up some lost ground in terms of auto-producing, and particularly electric vehicle production. We think that—

[Translation]

Ms. Monique Pauzé: Tell us more about the reparations aspect specifically; Volkswagen paid a fine, but invested \$2 billion in zero-emissions technology.

It is therefore not enough to just pay fines. Could we consider making reparations mandatory?

The Chair: Unfortunately, time is up, but I will allow you to answer yes or no.

[English]

Mr. Ben Sharpe: Yes.

[Translation]

The Chair: Perfect.

[English]

Ms. Collins, you have six minutes.

Ms. Laurel Collins (Victoria, NDP): To the witnesses today, thank you so much for being here.

My first couple of questions are for Mr. Wright.

It was mentioned that in the U.S. there was only a year and a couple of months between when the EPA issued a notice of violation to Volkswagen and when the company pleaded guilty to the criminal felonies and agreed to pay billions of U.S. dollars. In Canada, the ECCC began investigating and then charges were only laid four years later.

As part of their plea agreement in the U.S., Volkswagen entered an agreed statement of facts in 2017 that would be legally admissible in Canadian court.

Mr. Wright, shouldn't that have meant that the investigation would be easier or quicker here in Canada?

Mr. David Wright: Yes, it would have been much easier. The Canada Evidence Act, section 23, allows for foreign judgments and foreign findings to be applied in Canadian courts, and it certainly

would have streamlined and assisted any prosecution. The fact that it took almost another three years for the case to get brought before a court and for it to be resolved is unexplained at this point. Why did it take so long? The Canadian standards are based on the American standards, so in essence you're dealing with exactly the same case. You're dealing with exactly the same evidence. You're dealing with the same victims. You're dealing with the same people who uncovered the problem in the United States. My view is that when you have, in essence, the same company, it's a different corporate entity, but it certainly would be of great assistance in any prosecution. It doesn't mean that there would be no paper involved in the prosecution. There'd be lots of paper involved, but the prosecution should have been much more streamlined.

Ms. Laurel Collins: Do you have any idea why it would have taken four years, and can you explain how the legal process in a case like this usually works? I think you mentioned it might have been unusual that charges were negotiated before they were laid.

• (1615)

Mr. David Wright: In my experience, it's extremely unusual that the disclosure would be given prior to the charges being laid. It implies that there were discussions taking place by not the accused or the investigators but the defence counsel as to next steps and how the matter was to be dealt with. That's extremely unusual, and it's not open. It's not what we should be doing or how justice should be seen to be done. It must be clear and transparent, and the public should have an understanding that these cases are progressing through the courts. There should be pronouncements at various points as to the progress of the prosecution. That didn't happen. In fact, the involved organizations did not have a chance to give input regarding the ultimate resolution of this case.

Ms. Laurel Collins: Mr. Wright, are there any other cases that you're aware of in which charges would have been negotiated before they were laid in this way?

Mr. David Wright: I'm not aware of any charges. In 32 years I've never seen anything like this.

Ms. Laurel Collins: Thank you so much.

In the U.S., Volkswagen faced criminal charges. Would criminal charges have been possible here in Canada?

Mr. David Wright: I think so. I think that conspiracy to commit an indictable offence and fraud are two criminal charges that could well have been laid. The Crown could have taken that option. I didn't really see where the loss would be. You commence with criminal charges, and then at a later date, looking at the complexities that have arisen or enormous amounts of time or disclosure problems or any of those things, you can always have fallback on the indictable offences found in the Canadian Environmental Protection Act. Use of the Criminal Code should be made when you're dealing with extremely serious environmental crimes such as the one that was presented to the committee in public by Volkswagen's actions.

Ms. Laurel Collins: Maybe I'll just open this up to Mr. Wright or Mr. Malas regarding any ideas as to why it would have taken four years...and any changes to the current legislation—CEPA, etc.—that would allow us to go towards criminal charges in these kinds of cases.

Mr. David Wright: I just think, from my perspective, the Crown, in making the assessments as to how best to serve the public, should certainly consider criminal charges when this kind of flagrant violation has occurred. Every tool should be looked at, and every tool should be looked at carefully. There should be no evidence and no report that the public doesn't know. My thought is that the process should be much more transparent and that the Crown and the investigators should be working hand in hand with organizations and the public to make sure that these cases are properly dealt with.

The Chair: Thank you.

We'll go to the second round now.

Mr. Albas, go ahead for five minutes, please.

Mr. Dan Albas: Thank you.

Mr. Malas, is there any evidence that suggests individuals who file complaints with authorities are not having their complaints investigated? You mentioned your own case.

Mr. Muhannad Malas: Yes. In my case, after about two years—I think it was 22 months exactly since the investigation had been launched—we were worried about nothing happening from that investigation, given that no public updates were provided in that period. Also, I believe there's a statute of limitations in CEPA in terms of the two-year limit. If somebody doesn't bring forward an environmental protection action as a citizen within the first two years of an offence, then they can't do it afterwards. That's why I filed that request under section 17 for the minister to launch an investigation.

We were troubled that, out of the four violations I outlined in my request, three of which were critical—the import and the sale of those cars and also misleading and lying to the government and to the regulator—and were absolutely essential in terms of what happened with VW, the minister refused to launch an investigation, citing the ongoing investigation as a reason. That basically kept the public in the dark about what was happening.

Also, not to repeat myself, but just to highlight an important point, in terms of the investigation that the minister did open based on my request, which was on the continued sale of the 2015 half-fixed vehicles, over almost three years I received 12 progress update reports, and there was no information in those update reports about the status of the investigation. The report often just told me that officers were collecting evidence and, in many cases, the report would provide a timeline for when the investigation was predicted to be completed. In those 12 instances, whenever a time was provided, in most cases timelines were not met.

It was really a very puzzling process. It just made it very difficult to understand why the investigation was taking so long, and it was against the spirit of CEPA in terms of providing a mechanism for people to be able to take part in the enforcement.

• (1620)

Mr. Dan Albas: You've mentioned your own process quite a bit today, and I appreciate that. I'm sure there are others who may come forward on how they view this working.

You've mentioned the 2017 CEPA report. In response to the standing committee's report, then Minister McKenna noted that amending the act to allow citizens to use the courts to enforce the act may fundamentally alter the way that CEPA is enforced. Do you think the government's response to the previous report was incorrect?

Mr. Muhannad Malas: I think an important thing to realize about how enforcement, and specifically civil enforcement, works in CEPA is that we do have mechanisms in CEPA for civil enforcement. I mentioned some of those mechanisms, but they're just not working. They're not functional and they need to be improved.

In terms of whether that would alter the fundamental way that CEPA is enforced, I would disagree with that. I would say that in a way it would improve it and make it better, because civil enforcement usually comes in to complement government enforcement. In a case when government fails to enforce, or is delayed, or the enforcement is not reasonable, then citizens could step in and bring an environmental protection action.

It's important to also note that this is not a criminal proceeding. This is a civil proceeding. It's something that exists in most federal and environmental laws in the U.S. and in Australia and has worked very well in those jurisdictions.

Mr. Dan Albas: That's great.

I would just like to thank the witnesses. I appreciate their interventions today.

[Translation]

The Chair: We will continue with Mr. Baker.

Mr. Baker, you have the floor for five minutes.

[English]

Mr. Yvan Baker (Etobicoke Centre, Lib.): Thank you very much.

I want to thank all the witnesses for being here today.

Mr. Sharpe, prior to being elected federally, I was a member of the provincial legislature in Ontario and I did a lot of work on consumer protection issues. One of the things I learned about consumer protection is that if you want to prevent violations of the Consumer Protection Act—things like people who are duping consumers or selling things door to door, which is now illegal in Ontario—there are two factors that someone who's about to breach the law considers. One is what's the likelihood of getting caught. Number two is what the penalty is if one does get caught.

If we're thinking about those two categories and about CEPA, do you have any thoughts or advice in those two categories? Are there things within CEPA that could be improved to increase the likelihood that violators are caught? Is there anything you would suggest needs to be done in terms of making sure that we strengthen the penalties for those who are?

Mr. Ben Sharpe: It's an excellent question and absolutely something that we have continually made a tenet of our work at the IC-CT. It's not good enough just to have strong regulations on the books. You have to have effective compliance, enforcement and penalties, so that these companies don't just see fines as the cost of doing business. It has to be a meaningful deterrent for ceasing that behaviour.

In terms of the specific actions that Canada can take, I think one is working with colleagues at the U.S. federal level to strengthen the in-use testing requirements for vehicles. As I mentioned previously, we've offered up several concrete ways in which remote sensing can be mobilized to start collecting lots of data about how vehicles are actually performing in the field and to actually pinpoint and find defeat devices or models that have defeat devices very cost-effectively. We're really excited to have governments start to use that method.

Absolutely, penalties have to be stringent. There has to be a commitment on behalf of the government to pursue those penalties, particularly in cases like these where the actions were just unprecedented and over several years.

• (1625)

Mr. Yvan Baker: That's helpful, Mr. Sharpe. I will just follow up on that. I would like to step back and look at not just this case, but in general. CEPA covers a range of harmful and toxic substances. You talked about in-use testing of vehicles, but CEPA covers a whole range of things. We regulate dry cleaning, for example.

In terms of that "likelihood of getting caught" category that I talked about, and stepping back in general, is there something more we should be doing to increase the likelihood that people who violate CEPA get caught, regardless of the sector?

Mr. Ben Sharpe: Yes, absolutely. I can say with confidence that, at a very high level, compliance and enforcement should be the bedrock of any regulatory program, whether it's vehicles, dry cleaning as you mentioned, or water quality. Across the board, it's not enough to have that strong regulation in place. Governments have to be verifying that manufacturers and companies are doing what we expect them to do. Our mantra has been "trust, but verify".

Mr. Yvan Baker: Okay. Again, I'm just stepping back and looking at CEPA in general as it covers all sectors and all potential infractions. What are your thoughts about the penalties of CEPA?

Mr. Ben Sharpe: I can't say with specifics as to the penalty levels in CEPA. I don't have that information offhand. I would say that at a high level, I think there has to be a commitment on behalf of the Canadian government, particularly in this case, to go after Volkswagen in a way that's commensurate with what happened in the U.S.

Mr. Yvan Baker: I want to thank all the witnesses for being here today.

The Chair: Thank you.

Madame Pausé, please go ahead.

[Translation]

Ms. Monique Pausé: Thank you, Mr. Chair.

I'm going to put my question to Mr. Wright.

You've talked at length about what's been done in Canada, and the failures. What did Canada stand to gain by behaving in this way? There were much more severe fines in the United States. Canada was aware of the situation.

Do you understand why Canada behaved in this way?

[English]

Mr. David Wright: I do not. I can normally go by the court record that was made available to me. The Crown prosecution team should be asked what was going on and why they agreed to a penalty that was significantly less than the one meted out in the United States.

[Translation]

Ms. Monique Pausé: Even when exploring avenues to better understand motivations, deep down, we can't know. As you say, the Crown prosecutor would know.

I have another question, this time for Mr. Malas.

We talked about what happened in the United States. There were fines. There is a reparations aspect that I discussed earlier with Mr. Sharpe. An engineer was sentenced to 40 months in prison. Clearly, standards are not harmonized with those in the United States. Yet pollution has no borders.

Isn't there a way to harmonize standards for this sector?

• (1630)

[English]

Mr. Muhannad Malas: I'm not sure I am prepared to answer that question in terms of harmonization within that specific sector, assuming that's the auto sector, considering that is not my area of expertise. If there's something else that I can answer with respect to this issue, I am happy to do that.

[Translation]

Ms. Monique Pausé: I wanted to see if what applies in the U.S. could apply here. I was talking about the automotive sector.

The Chair: Thank you.

Ms. Collins now has the floor.

[English]

Ms. Laurel Collins: Thank you, Mr. Chair.

I want to go back to this question that has been raised a few times about the proportionality of the Canadian fine.

Mr. Sharpe, in your opening remarks, you mentioned that it works out to about \$55,000 per vehicle in the U.S. versus \$2,800 per vehicle in Canada. It's much smaller in Canada than the multi-billion dollar fine paid in the U.S.

It's really a question both for Mr. Sharpe and Mr. Malas. Do you think the Canadian fine is proportional to the scale of the crime committed and its impact on the environment and human health? If either of you want to take a moment, if it seems relevant, what is the impact on the environment and human health, and how was that, or wasn't it, taken into account in the Canadian plea agreement?

Mr. Muhannad Malas: I absolutely think that the fine was not proportional to the scale of this crime. As I mentioned, this is one of the worst environmental crimes in the history of Canada. If we want to just compare it proportionally to the U.S., we had 128,000 affected vehicles that were rigged, sold, and imported here. That was about a fifth of the number of vehicles that were affected in the U.S. Even though the U.S. has 10 times the number of our population, in terms of the VW cars that were impacted, they were five times higher than us. Then, if you look at the fines that they levied, they were much higher and greater in proportion than what we did here.

One thing I wanted to share—I'm going to look at my notes here because there are some numbers that I jotted down—is the way that the charges were packaged was, I think, really troubling because, for example, 10,269 2011 Volkswagen Jettas, the importation of all of those cars were packaged under one offence. That basically limits the number or the amount of fine that could be levied for that specific charge. I think that was troubling for us to see.

The Chair: Thank you.

We now go to the Conservatives.

Is it Mr. Albas again?

Mr. Dan Albas: Mr. Chair, I would like to share my time with Ms. Collins. I think she's on a roll.

Ms. Laurel Collins: Thank you so much, Mr. Albas.

I will maybe allow Mr. Malas to finish what he was saying, and then go to Mr. Sharpe.

Mr. Muhannad Malas: I was about to finish. The point I was going to make at the end was that the way the charges were laid and the packaging of 10,000 cars under one offence I think was one of the reasons why we saw the fine per car reduced to about \$1,500 compared to the—I can't remember the exact number—tens of thousands in the U.S.

Mr. Ben Sharpe: Chair, I will just quickly add to that commentary by Mr. Malas.

It's my understanding that the per-vehicle maximum fine amounts in the U.S. Clean Air Act versus the Canadian Environmental Protection Act are fairly similar in their magnitude. As Mr. Malas pointed out, the fact that so many of the per-vehicle charges were bundled together seemed fairly arbitrary and wasn't commensurate with how things played out in the U.S. in California. That was one of the reasons the total fine, as well as the per-vehicle fine, was so much less in the Canadian context.

• (1635)

Ms. Laurel Collins: Thank you so much, Mr. Sharpe.

Mr. Malas, can you speak for 30 seconds about the kind of impacts on human health and the environment in this case.

Mr. Muhannad Malas: Yes, absolutely.

The main pollutant in question here with the VW violations is NOx, nitrogen oxides. They are known to cause cancer, or to have been linked to some cancer conditions. Health Canada has data to show that exposure to NOx is associated with many deaths in Canada every year. Other pollutants also come out of the diesel exhaust of diesel engines that were not particularly part of the regulatory charges, for example, particulate matter. All the diesel exhaust together can have severe public health impacts.

Ms. Laurel Collins: Thank you so much.

Sorry to interrupt, it's just that we have limited time.

Mr. Wright mentioned this idea of an impact statement and that there wasn't enough time to do that. It sounds like the provisions around public participation.... Could you elaborate on what was used in this case? They seem to have fallen short, so what should we be doing explicitly to strengthen them?

Mr. Muhannad Malas: I'm sorry, could you repeat that question. My headset just disconnected for some reason.

Ms. Laurel Collins: Sure. Mr. Chair, I hope I can get another 15 seconds, if that's all right.

The Chair: Yes, of course.

Ms. Laurel Collins: My question was around public participation. Mr. Wright mentioned a victim impact statement. There wasn't enough time for people to submit that, so it doesn't seem as if these impacts were adequately taken into account. In your opinion what should we be doing to strengthen the provisions for public participation that seem to have fallen short?

Mr. Muhannad Malas: I'll be quick.

Compared to the U.S., where authorities and the Crown invited community impact statements and victim impact statements, we did not see that happening here. For the process that David was speaking to in the Canadian impact statement within the Canadian proceedings, I was one of the people who tried to submit a community impact statement. The Crown prosecutor did not allow me to present that. I won't repeat what David said, but we were not able to present that statement.

The problem we saw was that, unlike the U.S. where the prosecutor saw the community as an important piece of the prosecution, here it was the other way around where we felt we were being locked out of the court process. We were unable to represent our communities when it came to presenting an impact statement in how the VW crime impacted public health.

The Chair: Thank you.

Ms. Laurel Collins: Could I just ask that Mr. Wright's opening statement be sent to the committee as well to make sure we have all the opening statements and remarks, prepared speaking notes, on the record? I think we received Mr. Sharpe's.

The Chair: Apparently we've received it, but it's being translated.

We'll go to Ms. Saks for five minutes, please.

Ms. Ya'ara Saks (York Centre, Lib.): Thank you, everyone.

Thanks to all the witnesses here today.

This is my first time on the environment and sustainable development committee, having recently been elected in the riding of York Centre. For my constituents the environment was a significant issue, not just in what's happening currently, but also in how we are preparing ourselves for future generations. I am thrilled to be on this committee. My understanding is that today the focus of the study is on enforcement and collaborative measures going forward, and how we do better.

My first question, with that in mind, is directed to Mr. Wright. I noted that the government has invested \$46 million over the next five years in environmental enforcement. I'd like to hear from you, Mr. Wright, about the existing collaborative efforts between the different levels of government that are currently in place regarding enforcement. Would you be able to explain in more detail, to me and my home province of Ontario, how those work to ensure enforcement measures are working collaboratively to protect Canadians?

• (1640)

Mr. David Wright: The federal government and the federal Crown's office is a completely separate organization from the provincial Crown. It is certainly conceivable that the provincial Crown and the police operating in Ontario could have laid criminal charges against Volkswagen. There is no communication or co-operation in these kinds of investigations between provincial Crowns and the federal Crown. It is certainly my view that such collaboration does make some sense in certain specialized prosecutions. The understanding of the criminal process, and the understanding of the environmental legislation and the environmental science and collaboration between the two parties, could assist the Canadian public and stand for a more formidable enforcement of laws against serious environmental violators.

Ms. Ya'ara Saks: Thank you for that.

My understanding is that collaborative efforts between the different levels of government to ensure enforcement measures are put in place would be helpful.

Mr. David Wright: Certainly. I would also suggest that I'm not aware, but it may be possible, that there may be collaboration between the provincial and federal environmental organizations.

Ms. Ya'ara Saks: Thank you, I appreciate your response.

My next question is with regard to the environmental damages fund. We know that the EDF currently is collecting funds from fines, court orders and other measures that take place. With the VW court case, the largest damages fine in the history of Canada was levied, at \$196 million. My understanding is the aim of the EDF is to fund the projects that restore the environment and conserve wildlife.

My question is to Mr. Sharpe and Mr. Malas. Would you be able to explain to me a little bit more about the benefits of having a program that's geared to creating environmental benefits from enforcement measures, and whether the system is replicated in other countries so we have a model to work by?

Mr. Ben Sharpe: I do believe that the process by which the funds were earmarked, both in the U.S., as well as in California—California had its own separate legal process that it went through with respect to Volkswagen—we've seen significant amounts of the fines that have been set aside specifically for projects around electrification, and also advancing some other emission reduction programs, and this is across the transportation sector, which is really encouraging. It's not just limited to light-duty vehicles, it includes buses, heavy-duty trucks, even ships and locomotives in some cases.

The fact that these funds, which are substantial, are given the opportunity to make such an impact across the transportation sector with specific goals towards electrification and also environmental justice, has been a really key focus as we try to get these clean air technologies deployed in the communities that are most impacted.

Absolutely, I think that Canada has a blueprint that it can follow in terms of what the U.S. and California have done.

[Translation]

The Chair: Thank you.

We're back to the Conservative Party. I don't know who is going to speak.

[English]

Mr. Dan Albas: Mr. Chair, could we please pass this over to Ms. Collins, again?

Ms. Laurel Collins: I want to thank Mr. Albas and the Conservative caucus again for giving me time.

We heard in Mr. Sharpe's statement, or it's my understanding, that there are other companies that have used defeat devices. One of my concerns is that we've been waiting for the government to implement the clean fuel standard. It's one of the key parts of the government's plan to manage pollution, however, it seems like kinds of standards will only work if companies aren't able to get around them.

Mr. Malas, to your knowledge, are there other companies being investigated or charged in Canada?

• (1645)

Mr. Muhannad Malas: We're not aware of other companies that are being investigated or charged, but we are aware of charges that have been laid in other jurisdictions against other companies. I would mention just as an example Daimler, which owns Mercedes-Benz.

Concerning a class action lawsuit that's been filed in Ontario, some of the documents I looked at claimed that there were about 80,000 rigged or affected vehicles that were, I guess, imported and sold in the Canadian market, but we're not aware of any investigations happening by ECCC with respect to that company or other companies.

Ms. Laurel Collins: That is 80,000 just in Canada.

Do we have a sense of how many other cars with defeat devices may still be on the roads around the world?

This is for either Mr. Malas or Mr. Sharpe.

Mr. Muhannad Malas: I'll let Mr. Sharpe answer that question. He might have more information on that than I have.

Mr. Ben Sharpe: I don't have the numbers in front of me. Certainly there have been significant recall efforts around the world. For several, if not all, of these companies that have been found to have these defeat devices, we've done some estimates to try to figure out what the impacts are of having those vehicles be in compliance. Unfortunately, I don't know offhand how many vehicles we estimate are still on the road, including at those levels.

Ms. Laurel Collins: That's okay.

Do we have a sense of what the possible consequences are to human health of having these vehicles still on the road?

Mr. Ben Sharpe: It's somewhat a good thing that diesels aren't so popular in the North American market. Certainly in Europe there have been, we estimate, thousands of premature deaths as a result of this whole situation.

We, as an organization, like to remind ourselves that these aren't just numbers that we're throwing around. These are people's lives, these are premature deaths, these are hospitalizations, and these are asthma cases. That's why we really think this is an extremely important issue and why we're putting so many resources towards trying to empower governments to be able to measure and figure out to the extent of the problem and devise policy solutions to try to rectify it.

Ms. Laurel Collins: Thanks so much.

Since the beginning of the Volkswagen investigation, to your knowledge, has Canada taken any action to improve its compliance and enforcement operations?

Again, this is to Mr. Sharpe or Mr. Malas.

Mr. Muhannad Malas: Maybe I'll jump in.

I am not aware of any steps taken by the federal government to improve compliance checks and enforcement.

If I could just add one quick answer to the previous question you asked of me and Mr. Sharpe, the 128,000 Volkswagen vehicles that were sold in Canada that were rigged, the emissions from those ve-

hicles is the equivalent of more than four million cars. That's just to put into perspective the amount of exhaust that excess emissions were polluting our air.

Even though we don't have research to indicate exactly what the public health costs in Canada were, we know that up to 15,000 Canadians die every year because of air pollution, so putting the pieces together can really help to paint a picture of how harmful those excess emissions were.

Ms. Laurel Collins: Mr. Sharpe, you talked about penalties leading to accelerated electrification. What do you see as some key changes Canada should make to be going in the good direction of accelerated electrification?

The Chair: You have time for maybe one or two key changes.

Ms. Laurel Collins: One key change.

Mr. Ben Sharpe: One key change, a simple one, is to just significantly boost that fine and penalties amount.

Really making a significant impact on electrification is going to require a lot more than the roughly \$200 million that has been levied so far.

• (1650)

The Chair: Thank you.

Go ahead, Mr. Longfield.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

Thanks to the witnesses.

I'm going to share my time with Raj Saini, first of all, and then I'll pick up what might be left at the end of his time.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much.

Thank you very much to all the witnesses for testifying today. I really appreciate your time.

Mr. Malas, I don't understand some of the numbers you've expressed, and I have the numbers in front of me. How many charges were filed in Canada against Volkswagen?

Mr. Muhannad Malas: I believe it was around 60 charges.

Mr. Raj Saini: What would have been a maximum fine total, if all those 60 charges had been fined to the max level?

Mr. Muhannad Malas: According to a calculation that one of my colleagues made, and I'm not sure whether this is the precise number—

Mr. Raj Saini: Okay.

The precise number is \$265 million. If all 60 charges had been fined at the maximum level, it would have been \$265 million. The fine that we set was \$196 million, right?

Mr. Muhannad Malas: Yes.

Mr. Raj Saini: Then it would have been almost 73% of the total fine amount, right?

Mr. Muhannad Malas: Yes, but maybe I should clarify something.

The issue around how the entire number of cars of a certain model were packaged under one charge or one offence is the way the maximum number was reduced. If we had looked at each car separately, it would have added up to a much higher amount.

Mr. Raj Saini: The maximum fines that could have been applied to Volkswagen, then, with the 60 charges would have been \$265 million.

I don't disagree with what you're saying; I'm just looking at the gross numbers. It would have been \$265 million, and we fined at \$196 million, which would have been 73% of the total fine amount.

Now, in the United States, for the same charges, do you know what the value of the total criminal charges would have been, if Volkswagen had been fined to the max? It would have been \$32 billion, and the civil penalties would have been between \$17 billion and \$34 billion. If they had had a maximum fine count, then, it would have been between \$49 billion to \$66 billion.

Do you know what they actually charged?

Mr. Muhannad Malas: I'm not very sure.

Mr. Raj Saini: Okay.

Volkswagen paid \$2.8 billion in criminal penalties and \$1.45 billion in civil penalties, so in total it paid \$4.3 billion out of a maximum, if we look at the lower end, of \$49 billion, which would have been 8.6%.

Don't you think that in Canada we had a higher reach in terms of fines than the United States?

Mr. Muhannad Malas: I do not think so. I'm happy to provide some calculations afterwards. I'm worried that if I try to provide those calculations right now, I'm going to—

Mr. Raj Saini: No, I have the numbers in front of me. A lot of these numbers are from Canadian or American media.

I can appreciate that we can have a discussion about whether the fine value is not high enough in Canada and is more severe in the United States, and that's a perfectly legitimate argument to have. Comparatively, however, when you look at both countries and at both judicial regimes, you see that we charged the higher percentage of the total fine cost when compared with the United States.

I don't know the terms of the agreement, but I think that we as a jurisdiction were more punitive against Volkswagen than the Americans were.

Would you not agree?

Mr. Muhannad Malas: I'm afraid I disagree with that. I think much of the analysis by experts has shown that we are far behind.

Mr. Raj Saini: No, no, in terms of packaging all of it, that's fine. I'm just looking at the maximum fine value in Canada that could have charged under Canadian law as compared with the maximum fine law in the United States. We had a greater penetration of penalties than the Americans did—and the Australians also, because there are 14 jurisdictions in the world.

Anyway, I want to leave some time for my friend Mr. Longfield.

Mr. Lloyd Longfield: Thank you.

I'm thinking more in terms of not trying to relitigate a case here. The courts do what the courts do based on what we give them by way of regulations. I think we've made the point that the 2017 report needs to have some real consideration.

Unfortunately, we haven't been briefed yet by the department, so it's hard to see where they are in that process, but that will come out in future meetings. In the throne speech we're looking at investing \$46 million over five years in additional environmental enforcement to try to give ourselves more resources to handle especially the serious offences.

I want to get back to the NOx, very briefly.

Are we including it in our climate change list of greenhouse gas emissions, or is it something we also need to consider including?

This is for Muhannad, please.

• (1655)

The Chair: Give a brief answer, please.

Mr. Muhannad Malas: I wonder whether Mr. Sharpe might be in a better position to answer that question.

The Chair: Mr. Sharpe, briefly.

Mr. Ben Sharpe: My assumption would be that Environment Canada is taking into account NOx as it impacts ozone formation. I do not know for sure, offhand, and I don't like to speculate.

Mr. Lloyd Longfield: Thank you. That is something we'll want to check on.

[*Translation*]

The Chair: Thank you, Mr. Longfield.

I now yield the floor to Ms. Pauzé.

Ms. Monique Pauzé: Thank you.

We have the figures here that were provided to us. In Germany, for example, there have reputedly been 1,200 premature deaths due to these vehicles that were badly made or whose defects were hidden.

I think that when there is an attack on the environment and human health and that it is for the sole purpose of making profit, it should be severely punished.

This is my introduction to get to my next question.

The House of Commons has referred the review of the Canadian legislation to the Standing Committee on Environment and Sustainable Development.

With reference to Volkswagen and its shortcomings, can you suggest any changes we could make for enforcement purposes?

I'm thinking mainly of part 7, which deals with pollution control.

The Chair: To whom is your question addressed, Ms. Pauzé?

Ms. Monique Pauzé: To whoever can answer it.

The Chair: Any volunteers?

[*English*]

Mr. Muhannad Malas: I can take the first stab, if that's okay with the rest of the panel.

There are three very easy recommendations I can highlight right now. They are not within the context of part 7; they are probably more spread out throughout the act, but related to enforcement.

The first one would be to remove the prerequisite of investigation, or prerequisite for a citizen to be able to bring an environmental protection action, which is what I faced in this issue around Volkswagen. The minister has to first launch and then complete an investigation, and then the concerned citizen who wants to bring forward an environmental protection action has to demonstrate that the minister failed to investigate and respond properly. That's a very high threshold and a significant barrier in terms of discouraging people from bringing forward environmental protection actions.

The second one would be to remove the significant harm threshold. In the case that a citizen is able to pass the first bump when it comes to the investigation, as citizens, we still have to prove that there was significant harm to the environment. That language is very difficult and could position any citizen to fail, basically.

The third one would be around cost, to ensure that citizens are not paying costs if they are unsuccessful.

[*Translation*]

The Chair: Thank you, Mr. Malas.

We'll continue with Ms. Collins.

[*English*]

Ms. Laurel Collins: I just want to follow up on some of Mr. Saini's comments.

To me, it seems like he was misunderstanding a bit about what could be a maximum penalty in Canada with this case. I just want to go back to Mr. Malas, and potentially maybe open it up to Mr. Wright if he has a comment on this.

Even if you want to ballpark and then send us some documents afterward, in your opinion, what could have been the maximum charge if they hadn't bundled them and if it hadn't had the short-comings it did?

Mr. David Wright: The number of charges is completely discretionary. They chose 60 charges. They could have chosen 100 charges. They could have chosen 200 charges. They could have chosen 128,000 charges if they wanted to, but that's completely unreasonable.

The figure is actually a bit of a chimera. It's the maximum figure and the minimum figure for fines. It doesn't really assist you very much.

It looks like what happened was there was meeting between counsel—the Crown and the defence—before charges were laid. The whole determination as to how many charges would be the

subject of the plea appeared to be.... One inference is that it was the object of negotiation between the prosecution and the defence in a very unusual circumstance.

The fact is, the amount of money and how punitive it is was determined by the Crown, which had a wide open field. They could have gone as high as they wanted to and as far as they wanted to.

In my materials, I ended up looking at just the figure for fines and not the civil remedies. Certainly, I understood that it was \$4,745 per vehicle in fines—not civil remedies—in 2017, and in Canada it was \$1,535 per vehicle. It's less than one-third of the gravity of the fine.

Those are the comments I have.

• (1700)

[*Translation*]

The Chair: Thank you, Mr. Wright.

Your speaking time is up, Ms. Collins.

We'll continue with members of the Conservative Party, but I do not know who will be asking the next questions.

[*English*]

Mr. Dan Albas: I think the NDP is on a roll here, so I think I'd like to see one more round.

[*Translation*]

The Chair: I understand.

Ms. Collins, you may continue.

[*English*]

Ms. Laurel Collins: Thank you.

I just want to turn it over to Mr. Malas.

You had mentioned there were some estimates of what a ballpark of the fines would have been here in Canada if the charges hadn't been bundled the way they were. Could you follow up with written material with those numbers?

Mr. Muhannad Malas: Yes, I'd be glad to follow up with some materials. It was my mistake to come unprepared. It's the one number that I didn't put in my notes.

As Mr. Wright explained, the way the Crown would have played the charges would have played a big role in determining what the maximum fine was.

If we consider each car as an offence, I think the maximum fine under CEPA would have been several thousand to probably...I can't remember the number. If we assume it was several thousand, if you take that number and multiply it by the number of cars that were imported and if the charges also included the sale of the cars and some of the other charges that were laid in other jurisdictions that were not laid here in Canada, that would have added up to be much greater than what we fined the company.

I would be glad to follow up with exact numbers.

Ms. Laurel Collins: Thank you so much.

I just want to jump back to a topic that was mentioned before, about the fact that Environment Canada is doing fewer inspections and fewer prosecutions. Mr. Malas, you had mentioned that 20% of investigations were dry cleaners. The fall 2018 report that you had referenced also found that 70% of prosecutions—the vast majority—were of dry cleaners.

I'm just wondering if these numbers concern you. In addition, you had mentioned that more resources are needed. Are there any other steps that we could be taking to make sure that it's not small mom-and-pop shops, but it's really these larger companies who are doing the lion's share of pollution?

Mr. Muhannad Malas: When it comes to that percentage—70% of all convictions in a couple of fiscal years, between 2014 to 2017—I think they all targeted dry cleaners. It raises the question to me about whether ECCC is capable of and willing to take on large polluters. The case of VW is a prime example.

Yes, most certainly there's a funding issue or a resourcing issue. One thing that would be very interesting for this committee to look into is the capacity within ECCC enforcement. I believe 201 enforcement officers in 2018 were responsible for implementing not only the CEPA regulations, but also the Fisheries Act regulations across our massive country. That's not an adequate number, but I'm not sure what the right number would be. I think that's something that's worthwhile exploring.

The fact that ECCC is focused on very few substances in its inspection measures and enforcement actions and it's focused on small mom-and-pop shops, I think is troubling. It would be interesting to explore in this study by the committee why that is and what resources Environment and Climate Change Canada could have to be able to take on large-scale crimes.

• (1705)

Ms. Laurel Collins: Mr. Sharpe, you mentioned that bigger fines would help with leading us in the direction of accelerated electrification through this process.

Are there other steps you think Canada should be taking to ensure that this money is helping us move towards zero-emission vehicles and our climate targets?

Mr. Ben Sharpe: I can't say specifically how CEPA is set up with regard to how fines and those monies can be earmarked. Thinking about modernization of CEPA, we certainly, as an organization, would be very supportive of being very intentional, particularly with regard to how fines that are levied from the auto sector are mobilized, in terms of supporting not only environmental protection and electric vehicles, but also industrial policy.

As I previously mentioned, we think mobilizing electric vehicle production across the supply chain in Canada is really critical for the success of the Canadian auto industry.

The Chair: Thank you.

Next on the list I have Mr. Saini.

Mr. Raj Saini: I'll take some time, and if any of my colleagues want to jump in, that's fine. They can just let me know.

I have one question for you, Mr. Sharpe. I read one of your blog posts where you said that “two feds are better than one”. I found

that very interesting, because if you look at the alignment of the North American auto market, especially between Canada and the United States, about 98% of the vehicles are sold similarly. You wrote how important it is that if one jurisdiction does some of the work in terms of enforcement, the second jurisdiction didn't necessarily have to do the work or didn't necessarily have to commit that much, because one jurisdiction had already done the work.

How can we improve that in terms of our own legislation here in Canada?

Mr. Ben Sharpe: Thank you for referencing that blog post. I think the main message from that piece was to emphasize the fact that Canada and the U.S. are certainly integral partners in terms of vehicle and fuel policy, but I do want to make the distinction in terms of how penalties are being assessed.

We certainly think it's the case that it's just not enough that Volkswagen was penalized in the U.S. and that's good enough for the entire world. We really think that each individual country and jurisdiction has the right to assess for itself what the damages were from those actions and to levy penalties accordingly.

Mr. Raj Saini: I thank you for that, Mr. Sharpe, because I read somewhere that Volkswagen has been also charged in 50 other jurisdictions around the world.

My final question is for you, Mr. Malas. I'm sure you're aware of the environmental damages fund. As you know, a part of the settlement is going to that. Do you think there is any way we can improve it?

Mr. Muhannad Malas: I think one way that it can be improved—and I haven't looked into this in depth—would be to ensure that fines that are being collected are related to a specific type of damage. Look at the model in the U.S.

For example, on the \$196 million we're collecting from VW, is that money going into preventing the kind of pollution that VW caused? Is it going to ensuring reparations or addressing the kinds of pollution and impacts that certain communities faced from that particular violation or offence?

Specifically, when it comes to these fines that are really massive, like the \$196 million, we could be making sure that money is going towards moving forward solutions in a significant way, like the electrification issue that Mr. Sharpe writes about.

• (1710)

Mr. Raj Saini: Great. Thank you very much.

I'll pass my time over to MP Longfield now.

Mr. Lloyd Longfield: Thank you.

Mr. Sharpe, I wanted to continue on the thought about the types of chemicals that are damaging to human health and animal health and, for that matter, plant health, when we're looking at the broader impacts through CEPA. I also chair the all-party health research caucus. We just had presentations from researchers on pollen counts and particle counts from forest fires, and you're mentioning NOx.

I want to unpack that a bit as to whether your organization is looking at all types of pollution and the health effects coming from each, and whether they should be included in CEPA.

Mr. Ben Sharpe: Yes, absolutely. As an organization, we take a multi-pollutant view of vehicle exhaust. Certainly, it's much more of a story beyond just nitrogen oxides. It includes particulate matter. It includes toxics. It includes road wear from tires.

Really having a comprehensive view of vehicle exhaust we think is critical. In terms of assessing health impacts, again, we look at as much we can across that pollutant profile.

Mr. Lloyd Longfield: This gives us a good case study from which to base further studies. We're hoping to see the CEPA review come once it's been tabled in the House, which will be in the next little while, hopefully, and we won't run out of parliamentary time to have you back to unpack that a little more.

I want to thank you for your contribution to today's discussion. I'll turn it back over to the chair, unless you have another comment. We have a few seconds.

[*Translation*]

The Chair: You have 25 seconds left. If you have something to add, please go ahead. If not, there's no obligation.

[*English*]

Mr. Lloyd Longfield: In my 25 seconds, I'll say that the mandate of this committee isn't to get into the legalities, but really to look at policy impact, and I think we've had a very good discussion around that this afternoon.

[*Translation*]

The Chair: Indeed, I would like to thank the witnesses for making their considerable expertise available to us. I think we've learned a lot this afternoon. It's a very good start to our study.

I would also like to thank the analysts. They put together a stimulating panel of witnesses in record time. This was really good.

As I mentioned in the beginning, I wanted to set aside 15 minutes to discuss the third report of the steering committee. I propose that we discuss it in camera since we're going to talk about the contents of the report and it's quite confidential.

If no one objects, we will sit in camera. This implies that we disconnect and reconnect under different codes that will be sent to you.

It will take five minutes to make the transition.

Thanks again to the witnesses...

[*English*]

I see Mr. Baker's hand up.

[*Translation*]

Mr. Yvan Baker: Mr. Chairman, have the codes for the in-camera meeting already been sent?

The Chair: Apparently so.

Mr. Yvan Baker: I did not receive them.

The Chair: We'll look into this.

Mr. Albas, you have the floor.

[*English*]

Mr. Dan Albas: I didn't want to interrupt your thanking the witnesses. We do appreciate their participation today.

Mr. Chair, it shouldn't be up to you to be the super of motions and chair. So what I'm going to suggest is this. I move to go in camera for the—

The Chair: I appreciate that very much. It was becoming a big burden on me to do both. I'm just getting used to the procedures of a committee.

Mr. Lloyd Longfield: We can check our inboxes. The emails are there now.

The Chair: You got it? Okay, great.

Thank you again to the witnesses and to the members for their great questions.

[*Proceedings continue in camera*]

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

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

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

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

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

Also available on the House of Commons website at the following address: <https://www.ourcommons.ca>

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

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

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

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

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

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante :
<https://www.noscommunes.ca>