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# Standing Committee on Environment and Sustainable Development

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Chair: Mr. Francis Scarpaleggia





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• (1605)

[English]

**The Chair (Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.)):** Welcome, everyone, to the first meeting of the committee this year.

Today is our second meeting as part of the study on CEPA enforcement. We have with us today three witnesses: Maître Ariane Gagnon-Rocque, lawyer; Dr. Mark Winfield, from York University; and Ken Bondy, representing Unifor.

Before we get started, I want to mention that we only have until 5:30 today because of a committee meeting following ours. I'll give the witnesses maybe three minutes to make a statement, and then we'll go to the questioning. I think we might be able to get in a couple of rounds. I will need about 10 to 15 minutes at the end to go over some future business items, but it won't take very long, and that will take us to about 5:30.

[Translation]

We're going to start with Ms. Gagnon-Rocque, who will have about three minutes. She'll be followed by Mr. Winfield and Mr. Bondy.

Go ahead, Ms. Gagnon-Rocque.

**Ms. Ariane Gagnon-Rocque (Lawyer, As an Individual):** Good afternoon, Mr. Chair and members of the committee.

I'll try to be brief. First of all, I want to take this opportunity to thank you for inviting me to share my knowledge and opinion. It's a tremendous honour to be here this afternoon.

I come before you in a personal capacity to share my knowledge and opinions. As such, I want to advise you that I am not advocating for any cause or organization. I know that one of the triggers for this series of meetings on the enforcement of the Canadian Environmental Protection Act, or CEPA, is the Volkswagen case. I would be pleased to discuss it with you within the limits of my knowledge of this issue.

First of all, I would like to urge you not to overhaul a system on the basis of a single exceptional case. We must always keep in mind that this system, while it sometimes applies to exceptional cases such as Volkswagen and must be prepared to respond to them, applies more often to "average" citizens. In my opinion, they are the ones who should be the most concerned.

This brings me to two main points: the severity of the sentence and the certainty of being prosecuted. Together with the promptness

of the sentence, they help deter potential offenders from committing a criminal or penal offence.

In terms of the severity of the penalty, I see no need to amend CEPA. It provides penalties that are sufficiently severe to deal with environmental crime. For example, the maximum penalty per count for the offences with which Volkswagen was charged was set at \$6 million. Under the regulations, the maximum fine was never imposed. The company was fined a maximum of \$4,466,000 on some counts.

Furthermore, if one count per imported vehicle had been chosen and the maximum fine for each count had been imposed, which would have been completely disproportionate, the total fine would have been \$768 billion. In short, CEPA has what it takes to adequately punish environmental disasters, should they unfortunately occur.

It isn't in terms of the potential severity of the sentence that we should seek to do better. In fact, we all know that in reality, it isn't the severity of the sentence that is a deterrent, but rather the certainty of being prosecuted. This is where I think you need to focus your efforts.

The statistics speak for themselves: criminal prosecutions are rare under CEPA. I can provide you with those statistics.

Environment and Climate Change Canada initiates very few investigations and lays few criminal charges under CEPA. It's clear that our citizens are far from certain that they'll be prosecuted if they exceed the requirements of CEPA. This isn't surprising, since the Compliance and Enforcement Policy for CEPA states that the choice of enforcement measures under the act will promote "the effectiveness of the response in securing compliance as quickly as possible with no recurrence of violation". For this reason, enforcement officers will first consider a warning before criminal prosecution.

I believe that if criminal prosecutions were seen as a realistic and credible threat, corporations and individuals would likely take more proactive steps to comply with their environmental obligations.

I also believe it's time for Environment and Climate Change Canada to take full ownership of its administrative monetary penalty system, or AMPS, and even increase the basic penalties slightly.

**The Chair:** Could you please wrap up, Ms. Gagnon-Rocque?

**Ms. Ariane Gagnon-Rocque:** I was just finishing, Mr. Chair.

**The Chair:** Okay.

**Ms. Ariane Gagnon-Rocque:** The AMPS are an excellent compromise between the simplicity and quickness of a warning and the punitive nature of criminal prosecution.

Thank you very much for your attention.

**The Chair:** Thank you, Ms. Gagnon-Rocque.

Mr. Winfield, the floor is yours now.

[*English*]

**Dr. Mark Winfield (Professor, Faculty of Environmental and Urban Change, York University, As an Individual):** Thank you, Mr. Chair.

My name is Mark Winfield. I'm a professor of environmental and urban change at York University. I also run the joint program on environmental studies and law that we offer in conjunction with Os-  
goode Hall Law School.

I want to thank the members for the opportunity to speak to the committee today about these important issues related to the administration and enforcement of CEPA. I have a long history of engagement with the act. I was very involved with the original CEPA review back in 1995, when the late Honourable Mr. Caccia was in the chair. The committee led the review that led to essentially the current version of the act. I have continued to follow this over the years, particularly with respect to the federal-provincial dimensions. Most recently, I was an adviser to the commissioner of the environment and sustainable development on their most recent audit of the act.

I will focus on the wider issues around the enforcement of CEPA and not so much on the specifics of the Volkswagen case. Others have spoken to that. I think we need to think of the Volkswagen case as a bit of an outlier in terms of the overall enforcement story around CEPA. I really want to focus on that narrative. This is a complicated story, and that reflects the scope of the act.

In approaching this, I had a look back at the report that was done through the commissioner's office and the annual reports under CEPA. A number of things come out very strongly in this. One is that there's really a number of regulations under CEPA, but the enforcement activities on the part of the department seem to be relatively focused on a fairly short list of those regulations: PCBs; the import and export of hazardous waste; and in 2017-18 a lot on the environmental emergencies and also on petroleum storage tank regulations that apply on only federal lands and federal jurisdiction.

The implication of this that is you have a wide range of regulations. Some are very significant from an environment and health perspective, around which there seems to be very little enforcement activity in terms of inspections and warnings. We have already heard about the relative rarity of actual prosecutions. Thinking about pulp and paper regulations, new substances regulations, rules around the national pollutant release inventory, and ocean disposal, an area where the federal government is the primary regulator, we're seeing relatively little activity.

The other area I want to highlight to the committee members is a perpetual one: The enforcement of certain regulations falls under

administrative or equivalency agreements with some provinces, and from an information perspective, that situation is fairly opaque. We get very little meaningful information about what's happening under those agreements at the provincial level. I also note that we do have a new wave of these agreements emerging, particularly around climate change measures related to coal-fired electricity and methane.

Thank you.

• (1610)

**The Chair:** Thank you, Dr. Winfield.

We will go now to Mr. Bondy from Unifor.

You have three minutes, please.

**Mr. Ken Bondy (National Representative, Health, Safety and Environment, Unifor):** Thank you, Chair.

My name is Ken Bondy, and I am a national representative in the health, safety and environment department of Unifor Canada, the largest private sector union in Canada. We represent 315,000 members. On behalf of our president, Jerry Dias, I want to thank the committee for this invitation.

Our union believes that the Volkswagen emission scandal and the meagre penalties imposed on the automaker under CEPA certainly warrants review by this committee. Unifor, as the leading voice for auto workers in Canada, would like to have that opportunity to look further into this issue. The revelations of Volkswagen's violations raised concern among our members, as you can imagine, throughout the auto industry. How could a company that intentionally contravened our laws receive a paltry \$200-million fine? It remains unclear why Canada took such a passive approach.

We have seen what happened in the United States, where their prosecution ended with a settlement of \$25 billion from Volkswagen. That's 130 times the amount of the Canadian settlement. The U.S. is using this money to bolster its needed electric vehicle infrastructure, and it's a natural offset of course for both the economic and environmental damage the automaker's action caused. On top of this, and at the same time, VW committed to introducing new EV programs in its Chattanooga, Tennessee, assembly plant.

However, in Canada, we have let them carry on with business as usual with no investment at all. We need all companies to take climate commitments seriously. CEPA is our rule book; it allows us to punish those who contravene the laws.

Our union commends the federal government for many of its recent actions to take a lead on emissions reductions efforts and to meet the Paris targets, but bolstering our approach to CEPA enforcement must be part of the plan. It is painfully clear that Canada's approach to enforcement and prosecution of violations under CEPA needs strengthening. The CEPA language might not need to change, but guidance with regard to the environmental enforcement directorate's approach is important. Authorities must prioritize these high-risk violators.

I want to end by saying that the Volkswagen scandal shows us why corporate accountability measures are essential to uphold our social values, our workplace rights and our support for working Canadians.

Thank you.

[*Translation*]

**The Chair:** Thank you, Mr. Bondy.

Judging by the opening remarks, a stimulating discussion awaits us. We're going to start the first round of questions.

Mr. Albas, you have six minutes.

• (1615)

**Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC):** Thank you, Mr. Chair.

[*English*]

My questions today will start with Mr. Winfield.

Mr. Winfield, you focused a little bit more on the general application of CEPA. You've been involved with it for a long time. One thing you touched on in your opening statement was the scant—or in some cases, varied—enforcement. In the last Parliament, I heard a lot of concerns from small operators, particularly those in the dry cleaning industry, who were asking why the federal government—in this case, Environment and Climate Change Canada—was attacking them as small businesses. When you see the outlier, as you called it, of VW, it does kind of beg the question: Why does there seem to be enforcement on certain individuals and certain types of industry versus on others?

**Dr. Mark Winfield:** I think that's a very good question and one to which I must admit I don't have an immediate answer other than that there seems to have been a pattern around this for some time, with a very strong focus on the dry cleaners, for example. Now, there is a significant issue there around the trichloroethylene regulations. The commissioner in her report flagged why seemingly so much effort was going into the enforcement of those regulations and why all the tickets we see seem to be around what are mostly smaller operators and a few distributors while on some of these larger-picture regulations, pulp and paper being an obvious one but also more industrial-type sources, there seems to be very little activity.

The department apparently prioritizes things year to year in terms of the inspection effort, but one is left wondering why certain things are getting a lot of attention and other things seem to not get very much at all. We have to go back to the department again to ask what informs its approach here in terms of how efforts are priori-

tized. It may be that the dry cleaners are easier and less able to defend themselves than are the larger industrial facilities, but I think that's an obvious question to ask the department.

**Mr. Dan Albas:** You've raised a number of points. One is the equivalencies and the lack of the transparency. You've said that you've noted they're rather opaque.

Again, I heard mainly from small businesses in Ontario. There were some in British Columbia as well. In speaking to other members of Parliament, it just didn't seem to be an issue in other provinces. Is this the case where there is one law that's being applied differently in other parts of the country? That isn't fair, and I think that when a company is as big as Volkswagen, I'm sure it would not be appropriate to have these kinds of provincial equivalencies where provinces are having to take on large companies like VW.

**Dr. Mark Winfield:** Yes, and in the VW case, the relevant regulations—and part of this is also a Criminal Code matter too—are essentially federal, and they're not ones that lend themselves to equivalency or administrative agreements. Those mostly relate to things that are physically located in a province, with a pulp and paper mill being the most obvious example, where the inspection functions and effectively the enforcement functions get delegated to a province. In some areas, vehicle emissions and things like that are fundamentally federal jurisdiction through the trade and commerce power, so it's really the federal government's role to be enforcing there.

The concern with the administrative and equivalency agreements—this is one that goes back to the original CEPA review—is that they are a bit of a black hole in terms of what is happening in the provinces, and they don't apply in all provinces. They only apply in some provinces. We seem to have very little public information about what's happening where those agreements are in place. That said, we're also seeing very little enforcement, period, around the regulations that are generally covered by those agreements. It's principally the pulp and paper ones, historically, more than anything.

We're now seeing a newer set of them coming up around coal-fired electricity and methane from industrial sources. This is where the next round of equivalency agreements is emerging. Again, the same sorts of questions arise about how we're going to know from a federal perspective of what's happening, and that does beg questions of unevenness between provinces about how much enforcement effort actually goes into these areas.

• (1620)

**Mr. Dan Albas:** For my next question, I know you've said that you didn't want to necessarily focus on VW, but it is a high-profile case, and if people do not see a level approach.... I'll just simply ask you this. Do you think the fines levied against VW were measured? We've heard from some witnesses who said that the United States had far higher fees and that the damage was identical on a per capita basis for a VW in Canada versus a VW in the United States. There were a lot of questions on whether the Canadian government just gave VW a slap on the wrist. What is your opinion?

**The Chair:** Could we have a 20-second answer, please?

**Dr. Mark Winfield:** I think it's a legitimate question, even allowing for the order of magnitude in differences between Canada and the United States. The scale of the penalty does beg questions: Did we let them off the hook a little easier given the scale of this? Part of this, too, is that we haven't seen anything on this scale in our experience under CEPA so far.

**The Chair:** Thank you.

We'll go now to Mr. Saini for six minutes.

**Mr. Raj Saini (Kitchener Centre, Lib.):** Thank you to all the witnesses for coming today. I really appreciate it.

I'll start with you, Dr. Winfield.

As you're quite aware, there's a lot of talk in society and also in this committee about trying to eliminate waste and move towards a more circular economy where we aren't dependent on the endless consumption of products. Do you find that there's a role for a strengthened CEPA to play in this goal? What changes would you suggest we need to make this work?

**Dr. Mark Winfield:** That's a complicated question, and I'd be tempted to defer to my post-doctoral student who's the expert on waste matters.

I think that there is a federal role. It's complicated by the nature of the jurisdictional needles that are being threaded through CEPA. The structure tends to be product-specific or substance-specific in relation to toxic substances, so it becomes a question of whether you set extended producer responsibility rules in relation to specific types of products to push post-consumer management costs back onto the original designers and producers.

There may be a role around the import and export of waste rules. I'd have to think about that a bit. At the end of the day, the federal government does have control over transboundary movements of waste in and out of Canada and between provinces, depending on how much it wants to exercise that control. One would have to think a little bit about how to incorporate that into an extended producer responsibility regime, and in particular how one would coordinate what's happening with the provinces in that area. They tend to end up as the primary regulators. However, especially, with the movements around plastics, the implication is that once they're on schedule 1, the federal government can exercise regulatory control. The question is then how to design something that gets you where you may want to get to in terms of extended producer responsibility and circular economy.

**Mr. Raj Saini:** Let me take you in different direction.

I want to ask your opinion on the environmental damages fund. You know that fines levied under CEPA are to be used to restore the environment, so currently the court may direct funds to be used to repair the specific damage that the fines were levied for.

Should this remain at the discretion of the court, or should there be some statutory requirement...?

**Dr. Mark Winfield:** The tricky part is that, in a sense, it partially ends up falling to the Crown, which is making the plea around what the nature of the penalty should be. Given the variety of issues that could come up, one would have to think carefully about what sort of statutory constraint one wants to impose. Do you tie it tightly to the specific damage that occurred, or do you want to provide a little more discretion on the part of both the judge, and, as I said, typically the Crown, in making the case as to where those resources should go?

**Mr. Raj Saini:** When we're trying to improve our environmental oversight, and our enforcement works so closely with the United States in terms of testing and emissions, should we be accepting the United States EPA certificates of conformity for vehicle emissions to make us more aligned with them and maybe increase some efficiencies?

• (1625)

**Dr. Mark Winfield:** Again, this is a complicated one. Recent events demonstrate both the advantages and the pitfalls, in the sense that typically the U.S. EPA has been seen globally as the world's most competent environmental regulator. Obviously in the last four years that changed somewhat in terms of the landscape, and in a sense caused us to think again about whether we simply want to accept what they have accepted or whether we want to be having a look at it ourselves.

There's also an implication in some cases that.... Again, as with the experience we've been through, there can also be situations where we would in fact want to retain the discretion to require higher standards. You've had the Californias of the world saying they'd prefer a higher bar, and in this unusual situation, the U.S. EPA effectively being pushed by the administration downwards. Again—

**Mr. Raj Saini:** But if we look at the new U.S. administration, just by their first few weeks in office, you can see that there is this attitude to move forward and really advance the climate file.

I'm wondering if it would be better for us to be more in alignment with them. If they're going to be more progressive, then we should try to—

**Dr. Mark Winfield:** Yes. The short answer is yes. It's very clear as to where the Biden administration is going, which is to move in the same direction that California was trying to move in on these issues. We're clearly in a different world from where we were before January 20, but the environment we were in before January 20 also cautions us about tying ourselves too closely to where the United States decides to go.

**Mr. Raj Saini:** How much time do I have, Chair?

[Translation]

**The Chair:** You have 30 seconds left.

[English]

**Mr. Raj Saini:** I want to tell you that I've been reading a lot about what you've written about urban sprawl. I don't have the ability to ask you a question, but maybe I will some other time.

Thank you very much.

**Dr. Mark Winfield:** I'd be happy to chat. Thank you.

[Translation]

**The Chair:** Thank you, Mr. Saini.

The floor is yours now, Ms. Pauzé.

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

My initial questions are for Ms. Gagnon-Rocque.

First of all, I'd like to thank you for your testimony and for being with us, Ms. Gagnon-Rocque. You wrote a master's thesis on the penal concept in environmental law. We can talk about the Volkswagen case, but I'll try to broaden the discussion a bit.

In the 2020-21 departmental plan, Environment and Climate Change Canada intends to continue its risk-based approach to the enforcement of federal environmental laws. As a lawyer, what is your understanding of this specific risk-based approach to environmental law?

My other question is this: Does this position jeopardize the criminal provisions currently in place?

**Ms. Ariane Gagnon-Rocque:** That's an excellent question. Unfortunately, I don't know what is meant by a risk-based approach. What kind of risk is enough to trigger a lawsuit? Unfortunately, this information is often not available. Unless you're the people who make and implement policy, you can't know what their intentions are behind it.

That being said, I come back to my point. I think the key to reducing the commission of environmental offences is prosecution and enforcement. Since there are few measures in place to enforce the act, there are areas that avoid enforcement. Clearly, the system isn't doing its job of deterring offences, so choices have to be made, but I think we need to move away from warnings. There are a lot of warnings, and very few prosecutions are brought.

For example, in 2016-17, 2,721 warnings were issued and 26 criminal investigations were initiated. So we need to work on that. As I said, administrative monetary penalties fulfill some of the objectives of enforcement, such as promptness, but also the application of penalties.

• (1630)

**Ms. Monique Pauzé:** You also discussed special mechanisms. Do you think there are mechanisms that could be put in place to assess actual or potential harm to human health so that offenders can be more severely punished? The criminal prosecution process is lengthy, but we know that health and environmental issues are intertwined.

**Ms. Ariane Gagnon-Rocque:** I'm talking about prosecutions because, as far as I'm concerned, I'm primarily interested in the enforcement of criminal law. It's evidence that's going to be presented by experts. It would be possible to get that evidence. Sometimes it can be obtained simply by inference, based on the nature of the environmental offence or the nature of the pollution case. However, I believe that Environment and Climate Change Canada is able to obtain this information when it is investigating a pollution incident.

**Ms. Monique Pauzé:** In your brief, you also talk about the restorative aspect of justice. Earlier, my colleague Mr. Saini raised the issue of the environmental damages fund. It was established shortly after your brief was filed, I believe. There are fines that are given

Do you think that the fund is a good solution, or should there be more direct sanctions, where damages would be quantified by experts and where corporations would not be required to pay fines, but rather to repair the damage caused to the environment?

**Ms. Ariane Gagnon-Rocque:** The fund is certainly a better solution than paying fines into a general Government of Canada fund, since it is dedicated to environmental protection.

That being said, my preferred solution is that the money be allocated to a project directly related to the offence. It's important to ensure that the money is used to remedy environmental damage, for example, or to support a project that would provide environmental benefits directly related to the commission of the offence.

Ideally, I would advocate remediation, but not all environmental infractions lend themselves to it, as is the case with Volkswagen, because damage must be directly targeted and, above all, repaired. If it isn't possible to repair the environmental damage caused, this is a good option, but it's important to ensure that the funds are directed to a project that is related to the offence.

**The Chair:** You have 30 seconds left.

**Ms. Monique Pauzé:** I was just going to ask Mr. Winfield a question. It has been said, in the case of Volkswagen, that money could be paid for infrastructure for electric kiosks.

Was this a good way to proceed? Perhaps Mr. Bondy could answer that question. I'll get back to Mr. Winfield later.

**The Chair:** I'll ask you to be very brief, Mr. Bondy. You have 10 seconds.

[*English*]

**Mr. Ken Bondy:** Thank you.

It's absolutely so. In the case of Volkswagen, where they have very little or no footprint in this country and employ a small number of Canadians, I believe those monies leveraged to increase employment for working Canadians would make sense.

**The Chair:** Thanks.

Before we go to Ms. Collins, I would like to congratulate her on her wonderful news that her family will be getting larger. I thank her for that bit of good news at a time when good news is at a premium.

Go ahead, Ms. Collins.

**Ms. Laurel Collins (Victoria, NDP):** Thank you so much, Mr. Chair.

Mr. Bondy, you mentioned the disproportionate fine paid in the U.S. Even if you adjust for the population and the number of vehicles sold, it's a small fraction of the civil and criminal penalties in the U.S. To follow up on Madam Pauzé's question, do you think there's any explanation for the difference between the Canadian and American cases and their outcomes? Really, what could we have done here in Canada if we had taken the same approach as our southern neighbours in the U.S.?

**Mr. Ken Bondy:** I don't see a simple answer. The curiosity is why we went so easy on Volkswagen. Again, there was no threat of elimination of investment or jobs.

That brings me to the second point. I don't think that simply under CEPA levying fines on corporations that can't meet the protection targets is the answer all of the time. In fact, monies could be used to try to teach and enhance environmental protections through companies. Mr. Winfield mentioned the pulp and paper mill a few times, which is a concern, but there are opportunities and there is much employment happening in those facilities. If we were to use some of those monies to enhance the environmental protections rather than simply levying fines, we would not only protect the industries in Canada but also certainly make some progress on environmental protection.

• (1635)

**Ms. Laurel Collins:** I want to follow up on something you mentioned just a moment ago and in your opening remarks, that Volkswagen doesn't have any manufacturing or engineering operations in Canada, so the number of jobs at stake was very minimal. Do you think greater penalties against Volkswagen could have impacted Canada's auto-parts and manufacturing sector in any way?

**Mr. Ken Bondy:** I think there could have been some discussion, and that discussion was lost. Maybe it's too far-fetched to suggest that part of the penalties would be to have Volkswagen invest in an entire manufacturing plant in Canada, but there are certainly a lot of independent parts manufactured here. A lot of things go into the manufacture of Volkswagen-related vehicles. I think we really

missed the opportunity to enhance opportunities for Canada. We are not going to get that investment if we don't look at ways to manage it, or, in this case, perhaps even force it a little bit to get some of those.

I'm not talking about just Volkswagen. I'm talking about Nissan and Mazda and many of those vehicles that we see every single day on the road that are not employing any Canadians at this time.

**Ms. Laurel Collins:** In 2015 Export Development Canada made Volkswagen a \$526-million loan to help it consider doing business with Canada's auto-parts makers, as it was expanding its operations in the southern United States and Mexico. However, under WTO rules, Export Development Canada can't tie its loans to specific purchases. Unifor was pretty critical of this loan, especially on the idea of helping facilitate the migration of auto sector industry jobs to Mexico or the southern U.S. with no real guarantee of Canadian benefits. Do you think there would have been any compromise to that EDC investment with greater penalties to Volkswagen?

**Mr. Ken Bondy:** I am, number one, a big proponent of challenging WTO rules. I am sure a lot of my fellows in this country would agree that we get the dirty end of the stick under WTO.

Some of those things that may not currently be allowed could at least have been used for other initiatives. One of them is end-of-life vehicle recovery. We talk about the circular economy. We could have a kind of reverse of the Auto Pact, such that if you want to sell vehicles in Canada, you must disassemble and recycle them in Canada. Think of the opportunities that could be gained if we had that type of federal law.

**Ms. Laurel Collins:** Thank you so much, Mr. Bondy.

I have a question for Mr. Winfield.

You mentioned the rarity of prosecutions, and it has come up a couple of times that Environment Canada enforcement officers have been doing fewer inspections. They did 4,915 inspections in 2014-15 and that was down to 1,600 in 2018-19. The number of investigations has decreased; the number of prosecutions has decreased.

I am just curious as to whether these numbers are concerning to you. Do you think there is a lack of resources, or what is the core issue with the decline in enforcement of CEPA?

**Dr. Mark Winfield:** Obviously it's very concerning, because the enforcement threat has to be credible. If you're seeing less and less activity on the part of inspectors out there, that becomes a less and less credible threat.

Similarly—although this has been a consistent problem over time—actual prosecutions, even in the milder form of ticketing as opposed to full-scale prosecution, are still exceedingly rare, so one has to wonder how credible the threat that enforcement action will be taken is. You do see a lot of warnings in some years, particularly in 2017-18, but, again, very few actual prosecutions.



• (1640)

[*Translation*]

**The Chair:** Thank you.

We'll now begin the second round, but I forget who will ask the first question for the Conservatives.

[*English*]

**Mr. Dan Albas:** That would be me, Mr. Chair, if that's all right.

[*Translation*]

**The Chair:** You have the floor, Mr. Albas.

[*English*]

**Mr. Dan Albas:** Thank you very much.

Madame Gagnon-Rocque, you mentioned in your opening comments that the Canadian CEPA enforcement regime is based more on certainty than on severity. What would you say would be the American system for equivalent charges against Volkswagen? Is it a very similar model?

[*Translation*]

**Ms. Ariane Gagnon-Rocque:** Instead, I'm going to talk to you about what I'm criticizing about the Canadian Environmental Protection Act. It should be based on the certainty of being prosecuted and not on the severity of the penalties. There is no certainty of prosecution, and that's what needs to be improved. Research shows that the severity of penalties is a factor, but not the determining factor. In the U.S., the focus may be on the severity of sentences. However, criminological research shows that it's the certainty of being prosecuted, not the severity of sentences, that deters people from committing offences.

I believe that the problem isn't limited to the severity of the penalties and that a difference of millions, hundreds of millions or billions of dollars would not necessarily have changed the situation.

However, if there was certainty of prosecution, even if the fines were lower, the system would likely be better, and there would be fewer environmental offences.

[*English*]

**Mr. Dan Albas:** Thank you for explaining that. I have a much better understanding of that.

In that case, why do you think the punishment itself was not higher? Was it a failure of the legislation or was it a failure to prosecute the case? Where does it lie?

[*Translation*]

**Ms. Ariane Gagnon-Rocque:** That's an excellent question. I'll honestly tell you that I don't see any problem with the Volkswagen case. As I mentioned, if we had wanted to punish Volkswagen much more severely, we could have. We could have laid more charges and asked for the maximum fines to be imposed. The prosecution didn't do that. I think it was a choice.

As you may know, the prosecution has discretion. I, for one, believe that this is one of the powers that shouldn't be taken away. It's clear that the prosecutor, the Crown attorney who prosecuted Volkswagen, validated the agreement he had reached, probably with his

superiors. In my view, that decision has been made, and it's in keeping with a culture that doesn't apply the same rates as in the United States. I have to say I'm pleased about that. We have a very different system from the U.S. system, and we shouldn't try to copy it.

[*English*]

**Mr. Dan Albas:** Yes. You mentioned there was a choice, and we've heard the charges against VW were structured in such a way that combined models into one charge instead of doing separate charges. Was this appropriate, or should the prosecutor have acted differently in regards to charges?

[*Translation*]

**Ms. Ariane Gagnon-Rocque:** It's difficult for me to comment on this excellent question, but I think it has to do with prosecutorial discretion. It's difficult to interfere with that exercise of discretion.

That being said, should the prosecution have laid a hundred thousand charges? No, absolutely not. That would have been unmanageable. The only choice was to lump them together in some way.

Could more charges have been laid? Yes. Could fewer charges have been laid? Yes. This is probably part of the agreement that was negotiated. However, I don't know, because I wasn't there.

[*English*]

**Mr. Dan Albas:** Last, do you believe the government took steps to limit VW's liability in this case? That they purposely drew it back, it was not just a simple case of a missed target or a wrong decision?

• (1645)

[*Translation*]

**The Chair:** I'll ask you to respond briefly, Ms. Gagnon-Rocque.

**Ms. Ariane Gagnon-Rocque:** It's a difficult question. In my view, the prosecutor is separate from the executive branch. I find it hard to believe that this type of transgression has occurred.

Having said that, I have no information on this and cannot answer.

**The Chair:** Thank you.

[*English*]

**Mr. Dan Albas:** When I'm faced with a difficult decision, I go with option C.

Thank you.

**The Chair:** Thank you, Mr. Albas.

Mr. Schiefke, you have five minutes, please.

[*Translation*]

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

[*English*]

Thanks to all the witnesses for being here today.

[*Translation*]

My first question is for Ms. Gagnon-Rocque.

Ms. Gagnon-Rocque, thank you for being with us today.

The House of Commons has referred the study of the Canadian Environmental Protection Act to the Standing Committee on Environment and Sustainable Development.

What types of changes do you think should be made to improve the administration or enforcement of the act?

You mentioned that you think prosecution is rare. You also stressed the importance of certainty.

Does the bill need to be amended? If so, how can we improve it?

**Ms. Ariane Gagnon-Rocque:** You're asking a great question. I'm not sure if it's a legislative question.

To be honest, I think the Canadian Environmental Protection Act is a good act when it comes to penalties. In fact, it provides all the tools we need. Criminal prosecutions, tickets and administrative monetary penalties are in another act, but that's related to the Canadian Environmental Protection Act. It's all there.

What needs to be done is to get at it, and this is where we see a difficulty with the act. It's not being applied to its full potential. The enforcement policy for the Canadian Environmental Protection Act should be reformed to change the order of priority.

I don't have a specific recommendation for amending the act. The penalties are sufficiently high, and there are many options available to the executive to enforce the act. They are simply not being used, unfortunately. It may be more a matter of funding.

**Mr. Peter Schiefke:** Thank you, Ms. Gagnon-Rocque.

[English]

Dr. Winfield, we know that countries all around the world have a wide range of enforcement regimes in place to ensure the safety of their citizens. Based on the knowledge and expertise that you have, could you perhaps cite a few examples of success stories around the world that you would like to highlight where innovative enforcement practices have resulted in enhanced protection against harmful substances, or that perhaps are not used here in Canada that we could apply to a revised, strengthened CEPA that we're currently working on?

**Dr. Mark Winfield:** I think that probably the most significant component here.... I'll point to a couple of things. One is, in general, the expectation of enforcement. Again, the United States is very different. The U.S. EPA is much more aggressive around enforcement, not just on the criminal side but on the civil side as well, and you see that in the Volkswagen case. That gets people's attention.

At the provincial level in Canada, particularly in Ontario for example, we have moved quite strongly in the area of officers' and directors' liability and their responsibilities there, which again has been very effective in getting companies to establish internal environmental management systems because that becomes essential to defence. If you're an officer or director, you need to demonstrate that you exercise due diligence. Not only having an environmental management system but actually paying attention to the information that's being generated by it and to what your vice-president of environment, health and safety is saying becomes essential.

A third component that I would point to—again, you see this in places like Germany or California—is to not be static about the rules themselves and the standards but, instead, to operate in an environment of continuous improvement. The expectation is that the standards are not going to stay where they've been for 20 years; it's that, in fact, on a cycle of three or five years, we move upwards. Everybody's expectation is that if the technologies are improving and the practices are improving, then the rules are going to move and become more stringent. If you're a smart operator in this space, you're going to want to start to be more proactive, as well, about what is becoming possible, what sorts of practices and what sort of technology are being used here so that you're not static. We tend to stand with the rules once we've set them and not move them.

• (1650)

**Mr. Peter Schiefke:** Thank you, Dr. Winfield.

**The Chair:** We'll go to Madame Pauzé.

[Translation]

**Ms. Monique Pauzé:** My questions are for Mr. Winfield.

First of all, Mr. Winfield, I must say that you are a very valuable man for our committee because you have a wealth of experience.

I'm going to talk to you about health. According to Health Canada, there are 14,500 premature deaths a year due to air pollution and respiratory diseases.

Should the documented knowledge that links health problems to their causes receive very special attention in the review of the Canadian Environmental Protection Act?

Would there be any significant changes to this legislation? What would impact be of incorporating the right to a healthy environment into the act?

[English]

**Dr. Mark Winfield:** Health Canada has consistently been the weak link in CEPA. It's meant to cover both health and environment, and that's always been.... There were a few cases with sulphur and gas regulations where they came through, but it's been a notable and consistent gap in the administration of the act. We need to remember that health is part of the goals. It's part of the definition of "toxic", which puts a substance on schedule 1.

Indeed, many of the key threats, particularly the criteria of air pollutants and conventional toxic substances, are on that list already. With a few exceptions, relatively little use has been made of that authority. A certain number of occasional threats go there, but they do not actually do it.

In terms of a right to a healthy environment, it's complex. I think that there is certainly a case to be made. Many people.... David Boyd has, and Linda Duncan in her previous capacity on the committee did. That would certainly draw attention.

The biggest problem in a Canadian context and a common law context is that it's not clear that the courts would entirely know what to do with that, but it would certainly send a very clear signal in terms of Parliament's intent around the administration of the act.

**The Chair:** Thank you.

Ms. Collins.

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

Mr. Bondy, you talked about the need for corporate accountability. From Unifor's perspective, do you think that Volkswagen was held sufficiently accountable? If not, what are the dangers of failing to hold these kinds of large corporations to account?

**Mr. Ken Bondy:** I don't believe they were held accountable, based on the actions they took. Again, we're talking about a corporation that blatantly lied to the Government of Canada. The opportunity to educate them and assist them in making their product less polluting or environmentally damaging wasn't even an opportunity.

Again, within our law structure, if there was a way in which we could, at the very least, levy a larger fine that would go toward protecting or enhancing the environment in Canada.... To give you a quick example, monies could be used to build a wider infrastructure for zero-emissions vehicles across the country. We know that there are corporations out there. General Motors does business in Canada. They have committed that they will make all-electric vehicles by 2035. Well, that's not going to help Canadians if we don't have the infrastructure to support those vehicles and the people who work in those facilities.

Those fines could be used for enhancement on greater environmental opportunities in Canada.

• (1655)

**Ms. Laurel Collins:** Thank you very much.

Madam Gagnon-Rocque, the charges that were laid in the U.S. were actually criminal charges, whereas we laid no criminal charges here in Canada. Also, once the charges were laid, the timeline for the Crown and Volkswagen agreeing on the penalty was very short. Is it unusual to have those kinds of charges negotiated before they're laid?

[Translation]

**The Chair:** Ms. Gagnon-Rocque, I would ask you to give a brief response.

**Ms. Ariane Gagnon-Rocque:** The Canadian Environmental Protection Act contains criminal offences. While it is true that no charges have been laid under the Criminal Code, the charges are still criminal under the Canadian Environmental Protection Act.

Is this unusual? No.

It's not common for the defence to have access to the evidence before the charges are laid, but it does happen. I wouldn't call it unusual or exceptional.

**The Chair:** Thank you.

The next five minutes are for the members of the Conservative Party.

[English]

**Mr. Dan Albas:** Thank you again to our witnesses.

Madam Gagnon-Rocque, we heard a member of the Liberal caucus—I don't mean to make anything personal—suggest that per-

haps we should have a regime legislatively that should force these fines to go to specific ends rather than letting the court, the relevant jurisdiction, decide whether or not that's appropriate and whether or not the Crown should decide to pursue that.

I think the real issue here, and I hope you would agree, is whether or not the fine was sufficient. Even with the changes legislatively that said these monies will go to some environmental action, the penalties, you're saying, it seems to me, were not sufficient. Is that correct?

[Translation]

**Ms. Ariane Gagnon-Rocque:** This is such an exceptional situation that it's difficult to find precedents. That being said, I think it's a very severe sentence, if not severe enough. Moreover, I wouldn't allow myself to express an opinion on the subject. It's important to remember that this is something that's been discussed and has necessarily received the approval of the Crown attorney and subsequently the approval of a judge.

I think the sentences have been fairly severe, however it isn't my role to interfere in matters related to prosecutorial discretion in this regard. It's fine to be concerned about where the money from the fines will be directed, whether it will be directed to targeted projects rather than to Canada's consolidated revenue fund.

Court orders directing funds to a specific project are desirable in the circumstances, and these funds can be used to enhance environmental protection. I think the penalties are likely appropriate in the circumstances, despite the huge discrepancy between the penalties in Canada and the United States. We don't have the same system, and it's difficult to compare and, in fact, I don't think we should.

[English]

**Mr. Dan Albas:** Thank you for your explanation on that.

This is with regard to a comment made by Mr. Winfield about the varied application of the law. Again, let's say you have a very localized pollution event. Oil is spilled from a train in an area; it was negligent; CEPA's applied, etc., or some sort of substance...that they be used to remediate and to help deal with the issue itself and to try for some sort of restorative justice, so to speak. How do you do that with fines that some people have described before this committee as not being sufficient and having application right across the country? How would you best say to deal with that?

• (1700)

[Translation]

**Ms. Ariane Gagnon-Rocque:** That's an excellent question.

Up to a certain point, I think we're going to have to trust our Crown attorneys, who generally do their job quite competently. When making an order, the judge has the discretion to specify where the funds will go and what projects they will be allocated to.

The case you raised is problematic. If there is an oil spill at a certain location, and legal action is taken, the funds will likely be paid out several years after the spill, so the work to repair the damage caused will already be completed.

We have to take this limitation into account. When we want to allocate funds for repair, it's often already done, because we had no choice to do it before. We also need to think about this when we consider our options.

[*English*]

**Mr. Dan Albas:** Thank you for that.

Mr. Bondy, thank you for coming before the committee.

Your members compete in what is obviously a very competitive industry. Do you feel that in this case the law was applied equally to you, to a company where your workers work, or do you feel that in this case the government bent the rules for an international company that did not have a significant footprint here in Canada?

**The Chair:** Quickly, please.

**Mr. Ken Bondy:** Yes, again, I do think the rules were bent. One day we may get to the basis of why that occurred, but if they were going to be applied to domestic manufacturers, then of course all of those regulations and rules should be followed equally, no matter who the manufacturer is.

**The Chair:** Thank you.

Mr. Baker, you have five minutes.

**Mr. Yvan Baker (Etobicoke Centre, Lib.):** Thank you very much, Mr. Chair, and thank you to all the witnesses for being here today.

[*Translation*]

My questions are for Ms. Gagnon-Rocque.

Ms. Gagnon-Rocque, you said earlier that the Canadian Environmental Protection Act is a good act, but that we could improve its enforcement. Could you elaborate on that?

**Ms. Ariane Gagnon-Rocque:** That's a good question.

I think its enforcement can be improved by ensuring that there are more investigations. There are a number of inspections, but there are very few investigations. There are about 20 a year. I don't think that's enough.

What I see in the enforcement reports is that warnings are used a lot. It isn't necessarily the best option in the circumstances, but it's the preferred option because one of the factors considered in making the decision is the speed of the action. Of course, warnings are the quickest action, but I think it's something that should be avoided in many cases.

I believe more investigations and prosecutions should be undertaken. In cases where a prosecution isn't considered appropriate, administrative monetary penalties should be used. This is a regime that has proven its worth in Quebec. It's quick and allows for imposing a monetary penalty. Of course, the penalties aren't very big, but they can be quite significant.

If there was one change to be made, I think it would be to increase the administrative monetary penalties. Not only should they be used more, but the amount of money being imposed should be increased as well.

**Mr. Yvan Baker:** You also said that the certainty of the prosecution is more important than the amount of the sentence.

Is that why you recommend increasing the use of administrative penalties?

**Ms. Ariane Gagnon-Rocque:** Yes, absolutely.

It isn't a criminal penalty, but an administrative one. However, it's still a punishment. It has proven itself in many other areas. Administrative penalties bring some certainty about the duty to answer for our actions.

**Mr. Yvan Baker:** You said that we shouldn't adopt the U.S. approach to prosecution. Could you explain your comments?

• (1705)

**Ms. Ariane Gagnon-Rocque:** Yes, absolutely.

I'll bring you back to what I was saying: It's not the severity of the sentence that deters offenders; it's the certainty of being prosecuted.

Personally, a multi-billion dollar fine doesn't impress me much. I'd be much more impressed by the certainty that criminal proceedings will be taken against offenders. It would be a more positive change than increasing the fines.

**Mr. Yvan Baker:** In the U.S., is the certainty of prosecution about the same as in Canada? If not, is it greater or less?

How does the certainty of prosecution compare between the two countries?

**Ms. Ariane Gagnon-Rocque:** That's an excellent question. I don't know. I don't know whether my colleagues can answer it, but I don't have any statistics on it for the U.S.

**Mr. Yvan Baker:** Thank you very much.

**The Chair:** Thank you, Mr. Baker.

We have time for a quick round of questions. So I propose giving three minutes each to the Conservative Party and the Liberal Party, then a minute and a half or two to the Bloc Québécois and the New Democratic Party. Then, it should be 5:20 p.m. or 5:25 p.m.

So we'll start with the Conservative Party.

Is Mr. Albas going to take the floor?

[*English*]

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

Mr. Winfield, I know you said that you didn't really want to get into the VW case. However, there are some abnormalities, such as the fact that both VW and the Crown met before a judge before the settlement was reached, those kinds of things.

Are those normal, in your opinion, in CEPA enforcement?

**Dr. Mark Winfield:** I would need a larger sample and a deeper dig to know the specifics of the procedures that were followed. This is not unknown for there to be negotiations, and at the end of the day it has to be sanctioned by the presiding judge in terms of what is accepted or not.

**Mr. Dan Albas:** Just by rule of thumb....

**Dr. Mark Winfield:** Even on rule of thumb, without knowing in depth the detail of how these prosecutions are handled, I would hesitate to go there.

**Mr. Dan Albas:** As a member of Parliament...and I expect that all Canadians would say we believe in the rule of law and that these decisions should be at arm's length.

However, when people ask questions around the process, how best for us to respect the jurisdiction of the court and the decision that was made, and how best to raise some of the concerns—which I guess is what we're doing here—what other mechanisms do you think members of Parliament can have, in order to ask these questions to demonstrate to Canadians that the rule of law is being followed and that the law itself is whole?

**Dr. Mark Winfield:** As you say, I think the exercise we're engaged in here in asking these questions is central to that process, because the message will go through the system that questions were asked.

It's a very tricky space. We do not want to interfere in prosecutorial discretion on the part of the Crown, while at the same time conveying that we would want greater transparency and perhaps a more robust approach to enforcement more generally. I think that's some of the message here. We're seeing ourselves as looking relatively weak relative to the approach taken by the U.S. EPA, which is, of course, a much more aggressive regulator and is backed by state regulators that have incentives built into their system to also be fairly aggressive in how they enforce the rules.

**Mr. Dan Albas:** I asked this question earlier to another witness.

If you put the Canadian and the American system side by side, could you give a few adjectives or descriptions for both, so people can understand the contrast?

**The Chair:** Very briefly.

**Dr. Mark Winfield:** The American system is much more aggressive in its approach to prosecution. It incorporates mechanisms that not only parts of the government can do, but that citizens can do this as well, on their own. NGOs, states, become involved.

Our approach has historically been much softer, and what we see at the federal level is particularly emblematic of that. We have tended to approach these things through negotiation as opposed to prosecution.

**The Chair:** Ms. Saks, for three minutes, please.

• (1710)

**Ms. Ya'ara Saks (York Centre, Lib.):** Thank you, Mr. Chair.

Thank you to our witnesses today.

I will start with a question to Madame Gagnon-Rocque, and Dr. Winfield you might want to chime in on this.

Both of you have indicated that the Volkswagen case is pretty much an outlier in terms of federal cases. You both focused on the fact that the act is a good act and that we have tools in our tool box to have an effective CEPA.

As we're looking forward in improving and enhancing CEPA, what kinds of issues should we be considering, perhaps in the levels of enforcement, from the provincial and federal relationship, or sector by sector?

**Ms. Ariane Gagnon-Rocque:** Dr. Winfield, do you have any thoughts?

**Dr. Mark Winfield:** I think a couple of things are coming out here. One is that the tool box, particularly in relation to enforcement, is quite good. The problem here is at the level of administration and policy in how those tools are used by the department. I would keep that in mind. There may not be a legislative fix here in this particular area of enforcement, because the provisions of the act are very comprehensive already.

The levels of enforcement are complicated territory, at least in relation to the provinces. Much of the enforcement effort ends up focused within the federal jurisdiction for a variety of reasons. I continue to be concerned, as I have been for a long time, particularly about the opaque nature of what happens under the administrative and equivalency agreements, where one way or another enforcement administration is effectively delegated to provinces and then the information on what's happening dries up.

As I mentioned before, we're seeing a new round of equivalency agreements come into the equation around coal-fired electricity and methane from industrial sources, which again begs the question: If we accept the provincial regulations as equivalent to what has been done under CEPA, then what do we know about how those provincial regulations then get enforced? At the moment, we seem to know next to nothing, and it's a "don't ask, don't tell" situation.

[Translation]

**The Chair:** Ms. Pauzé, you have time to ask a question, then it will be Ms. Collins's turn to ask one.

**Ms. Monique Pauzé:** Okay, thank you.

Mr. Winfield, you pointed out the lack of enforcement activities, but you have worked for the Commissioner of the Environment and Sustainable Development. Would you agree with reviewing the commissioner's mandate to give him increased powers to enforce the legislation? Would that be a good approach?

[English]

**Dr. Mark Winfield:** It's a possibility. I did work in the commissioner's office in 2018 in the case of this audit. I was an external adviser, which the office uses on these sorts of things.

It's complicated. I want to think about it some more. There have been efforts to try to strengthen the commissioner's role. There is push-back within the Auditor General's office about that. It's tricky. There's already an operational function around the petition process, and that's a complicated dynamic inside the office.

We'd need to think about whether you want the commissioner trying to be involved in prosecutions, for example, as opposed to... Perhaps having a mandate that pushes more in the direction of asking questions about actual outcomes and results as opposed to simply the management and administration of things, because at the end of the day, the mandate is an audit mandate as opposed to one to talk about actual outcomes.

**The Chair:** Thank you.

Ms. Collins, there's time for one question.

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

Dr. Winfield, you said we have a different kind of enforcement culture here but we do have identical emission laws in Canada and the U.S. because of the common market. It seems we could potentially use some of them.

We've heard from previous witnesses that those provisions around public participation and enforcement might have fallen short and that they continually fall short. I'm curious how you see those provisions around public participation being used in this case and in general, and what we could do to strengthen them.

• (1715)

**Dr. Mark Winfield:** This goes way back.

The attempt to introduce the kind of citizen suit provision that exists in U.S. environmental law didn't work in CEPA 1999. It's never been used and it's very complicated from a citizen perspective.

There is a request for investigation provision. Again, I'm not seeing much activity there. I think people have found the petition process to the commissioner under the Auditor General's office more useful in those situations, because it compels a response. A lot could be done there, but obviously I'm out of time.

**The Chair:** I'm sorry about that, Mr. Winfield.

We have the Conservative Party for three minutes.

**Mr. Dan Albas:** I'll take that, Mr. Chair.

If you could continue, Mr. Winfield, I'd like to hear the full explanation.

**Dr. Mark Winfield:** I would need to think carefully in terms of how you structure a citizen suit provision in a Canadian context. We have similar provisions in the Ontario Environmental Bill of Rights, and I have to admit they've been equally ineffective and unused.

The request for investigation process is somewhat useful. The crucial thing there is that in Ontario, where we do have that, there is both the compulsion that the department actually give a response, which is quite powerful, and—this is going back to Madame Paupé's question—the link back to the commissioner, because in Ontario under the Environmental Bill of Rights, once a request for

investigation is filed, that opens the door to the environmental commissioner. It used to, and it still does, although the commissioner, of course, has now been embedded into the Auditor General's office, but the statutory provisions are there in Ontario. The commissioner could then speak to how the request for an investigation was disposed of by the department. Did it respond? Was the response adequate?

In Ontario, we have seen cases in which a request for investigation has actually resulted in prosecution. If you look at the former environmental commissioner's reports, you see quite extensive discussions about how the department disposed of this in particular situations, and there is sometimes criticism that perhaps greater action should have been taken.

I think there is space to work on this, and we have precedent. It goes back to the question of how we, perhaps, link the commissioner's role into this more effectively than we have at the moment. At the moment, there's a firewall between the commissioner process and the CEPA process. There might need to be a bit more of a linkage made somehow around those provisions.

**Mr. Dan Albas:** Thank you.

**The Chair:** Finally, we have Mr. Longfield for three minutes.

Go ahead, please.

**Mr. Lloyd Longfield (Guelph, Lib.):** Thanks, Mr. Chair. There's a lot of very good discussion.

I want to start with you, Mr. Winfield. You mentioned in an earlier part of the meeting the sectoral analysis. I'm hearing the need for a more stringent enforcement mechanism to come through. Maybe not more stringent, that wasn't the word. It was more frequent or more predictable or knowing that somebody would be looking at you if you were not following the laws and regulations.

How could this be tied in by sector? I'm thinking of our climate change goals by sector. Transportation has certain goals. Industry has certain goals. There are certain goals for buildings. Would it make sense to tie these in proportionately to the larger emitters, or how would you look at prioritizing?

**Dr. Mark Winfield:** Again, that's a complicated question. To a certain degree the CEPA regulations themselves are organized by sector. Typically you're dealing with a quite distinct class of source of problems with each regulation, so that in and of itself helps to give you some boundedness. It comes back to your question about what we mean by risk-based approaches. Does this mean you go for those that you see are presenting the largest threat? That's one possibility, the big sources. The tricky part with that can be that you don't necessarily want to ignore the cumulative effects of a lot of small sources, which can add up to a big problem if you're dealing with thousands of those as opposed to one big one. You can end up with a problem just as big. It's a tricky set of balances in terms of figuring out where you want to put your effort.

The other thing I'd emphasize about risk-based approaches—and I think in Ontario the situation of long-term care has demonstrated some of the risks with those—because, of course, this was something the Auditor General told the province to do and then they discovered it wasn't doing proactive work at all. The problem with risk-based approaches is they can be backwards-looking. You're looking at what went wrong before, as opposed to looking forward to what might go wrong in the future. You want to be very careful about that.

● (1720)

**Mr. Lloyd Longfield:** As Unifor has worked with automotive assemblers to get into the electric vehicles, maybe that isn't the first place to look. However, as you mentioned, long-term care was another one that the province was responsible for, but we aren't getting results.

**The Chair:** You may make a very quick comment, Mr. Winfield, for 10 seconds.

**Dr. Mark Winfield:** It's a complicated landscape. The presence of unionized workforces can have a very significant effect. I'm more familiar with this in a rail context, but it means you have an organized set of eyes that are well informed about what's going on, and that can be very powerful.

**The Chair:** Thank you very much.

I would like to thank our witnesses and all the members of the committee for a very interesting discussion. We really delved into a lot of topics and gained a greater understanding of the enforcement issue.

[Translation]

**Ms. Monique Pauzé:** Mr. Chair, I would like to take the floor. I apologize, I raised my hand.

**The Chair:** Sorry, Ms. Pauzé, I did not see you.

**Ms. Monique Pauzé:** Given our tight schedule, I would like us to invite the witnesses to send us any additional details they may have.

**The Chair:** That's a good idea.

So I invite the witnesses who wish to do so to send us any information or documents they have without hesitation. We could add that to the upcoming report.

[English]

On that, we're not going to go in camera, but we're going to go into a bit of future business.

I want to go over where we're headed from here. We have a meeting on Wednesday. The problem on Wednesday is that there are two votes, so it will be a truncated meeting again. I would suggest we go to 6 p.m. and discuss some motions that I know some members want to discuss. It's the final meeting in our CEPA study, and the public servants from Environment Canada will be here.

After that meeting we have a week's break. Then on the 15th we don't have a meeting because it's Family Day in Ontario and other parts of Canada.

On the 17th, 22nd and 24th, I'm looking at.... We could have some discussion on the motions on the 17th as well. We could start with that if we don't finish on the 3rd. Then we can get into a work plan for the plastics study and some drafting instructions for this CEPA enforcement study, and we can look at the draft report for the zero-emissions vehicles study.

I think all of that will take up a good three meetings. Then we can hit the ground running in March with whatever we're deciding to do.

That's how I see it. Unfortunately, the House doesn't have the resources to allow us to have steering committee meetings, so that's why I'm suggesting that we can do future business if we have time on the 3rd. If we don't get through it, we can do it on the 17th, but unfortunately we can't do steering committee meetings outside of our scheduled meetings.

**Mr. Peter Schiefke:** Mr. Chair, can we bid a farewell to the witnesses who are still with us, and perhaps thank them?

**The Chair:** I thought I had said that you were free to go, as it were. I didn't realize we were keeping you here. I'm sorry.

Thank you.

Go ahead, Ms. Collins.

● (1725)

**Ms. Laurel Collins:** Thanks, Mr. Chair.

I just wanted to clarify how many votes we had on Wednesday. I thought there were more than that.

**The Chair:** There could be. I don't know.

**Ms. Laurel Collins:** I could be mistaken. I thought we had a bunch of private members' motions to vote on as well.

I want to move the notice of motion that I sent out about the fourth meeting of our CEPA study. Do you want me to read it out?

**The Chair:** Yes. Go ahead.

**Mr. Dan Albas:** Mr. Chair, I'm really sorry to bump myself in there, but if we can get some agreement around Ms. Collins' motion, I think you will find we're in favour of it.

Do we need to have a formal motion other than to say that we agree with what she's asking for? Then we can move on.

**The Chair:** We have to see if the other parties agree as well.

**Ms. Laurel Collins:** Maybe we can do it by unanimous consent, if everyone has read the motion. We can just see if—

**The Chair:** Okay.

Does anyone want to speak to the motion? .

Mr. Longfield, go ahead.

**Mr. Lloyd Longfield:** Chair, my feeling is that we need more meeting time for the motion, so I was going to make an amendment to the motion.

**The Chair:** Yes, here's the problem, colleagues. Because there's another meeting after this committee, we can extend this discussion a bit, but not that much.

I'm suggesting that if we can't do anything on the 3rd with this motion, maybe we can start on the 17th with discussions of motions and get those out of the way.

**Mr. Lloyd Longfield:** I have a suggestion. I was going to make an amendment, but maybe in general.... We do have a newly appointed commissioner. Maybe we could get that commissioner in for a two-hour slot and some of these questions could be asked at that time, but I think we need a more fulsome study. Maybe we could pivot to having the commissioner here.

**Ms. Laurel Collins:** Mr. Longfield, maybe I can just quickly give a rationale for the motion as it is.

**The Chair:** Go ahead, please.

**Ms. Laurel Collins:** Because our meetings were cancelled on Wednesday and we lost one of our core witnesses for the Volkswagen study, we're talking about reducing my study down to three. I'm just proposing swapping out that last day for a one-day hearing on this. We don't necessarily have to make any recommendations to Parliament that day. Then, if we think that this deserves a longer study, we could talk about it at that point. The new environment commissioner who was just appointed won't really be able to give us advice on their role, necessarily, and potentially we'll need to invite other people to do that in the hearings.

**The Chair:** What you're saying is that we would do this after the officials: that we'd have a meeting on the 17th and push everything else down one meeting. Is that what you're suggesting?

**Ms. Laurel Collins:** Really, it's just swapping out that last, fourth meeting of my study for this hearing.

**The Chair:** Okay. That would mean we'd do that on the 17th.

[*Translation*]

Ms. Pauzé, did you want to comment on Ms. Collins' motion or on something else?

**Ms. Monique Pauzé:** I wanted to comment along the same lines as Ms. Collins.

Four votes will be held on Wednesday in the House. Once again, this committee's meeting will probably be cancelled because of that. I know that we cannot change the day, but I propose that we make no commitments from 5:30 p.m. to 6:30 p.m. on Mondays and Wednesdays. That will enable us to make progress in our studies, especially since a number of these motions are passed on to our committee.

**The Chair:** We cannot go later than 5:30 p.m. on Mondays because there is a meeting, but, if I have understood correctly, we could meet until 6 p.m. on Wednesdays.

Thanks to the new voting application, votes could be conducted more quickly. I don't know whether the application will be used this Wednesday. In any event, we will definitely have to reschedule meetings if the Wednesday meeting must be cancelled because of the votes.

I would like to come to an agreement on Ms. Collins' motion. Can we schedule a fourth meeting in this study on the Canadian Environmental Protection Act to hear from the Commissioner of the Environment and Sustainable Development? That is what I would like us to focus on right now.

• (1730)

[*English*]

Mr. Schiefke—

I'm sorry, Mr. Chair, just to clarify—

Yes, go ahead, Ms. Collins.

**Ms. Laurel Collins:** —that fourth meeting is really a hearing about the environment commissioner's role, not to hear from the new environment commissioner.

**The Chair:** You wouldn't necessarily want to hear from the new environment commissioner is what you're saying.

**Ms. Laurel Collins:** Potentially, but he would be maybe one among the four witnesses or maybe not.

**The Chair:** Okay, but it would be part of the CEPA study, essentially. We're not doing a separate study now. It would be one meeting as part of the CEPA study.

**Ms. Laurel Collins:** Yes. Again, it would be one hearing on the environment commissioner, not necessarily on CEPA.

**The Chair:** Okay. It wouldn't factor into the report is what you're saying. Okay. I have it.

**Ms. Laurel Collins:** Exactly: a separate hearing.

**The Chair:** Mr. Jeneroux, I know that you've had your hand up, but is it about this or is it about your motion?

**Mr. Matt Jeneroux (Edmonton Riverbend, CPC):** It's about my motion, Mr. Chair.

**The Chair:** Okay. Do you mind if we just—

**Ms. Laurel Collins:** Could we call the question?

**The Chair:** There's a call for the question.

Okay: That means, I guess, we just go to a vote at this stage?

**Mr. Dan Albas:** Can we not just test the room for unanimous consent?

**The Chair:** Yes.

Is there unanimous consent to have a hearing on the environment commissioner?

**Mr. Lloyd Longfield:** No. I don't have that.

**The Chair:** There isn't. Okay.

Then we'll go to a roll call vote, I guess?

**Mr. Lloyd Longfield:** Peter had his hand up, didn't he?

**The Chair:** Sorry, Peter.



**Mr. Peter Schiefke:** Mr. Chair, thanks for recognizing me.

Unfortunately, I have an interview to get to in exactly eight minutes. At the beginning of the meeting—

**Mr. Dan Albas:** Oh, come on.

**Mr. Peter Schiefke:** I'm sorry, Mr. Albas, did you want to say something? I have the floor.

**Mr. Dan Albas:** The chair actually had set this at five o'clock. So you guys are playing out the clock.

**Mr. Peter Schiefke:** I'm not playing out the clock, actually, Mr. Albas.

Mr. Chair, on a point of order, I think I have the floor.

Mr. Albas perhaps can tell the future. I was simply saying that if we could speed this up a little bit, it would be appreciated, because I have an interview to get to in eight minutes. That would be number one.

Number two, I don't feel like we're given enough time to discuss adequately what Ms. Collins is presenting. As much as I agree with certain aspects of it, perhaps I don't agree with other aspects of it. I think Mr. Albas needs to respect my point of view on this and understand that perhaps I have some questions for Ms. Collins.

I also heard what my colleague Mr. Longfield had proposed, which I found interesting. Perhaps I could have the opportunity to ask Mr. Longfield to elaborate on what he's proposing. This is the way committee works. Perhaps Mr. Albas didn't get the memo. But here we are.

I'd like to ask Mr. Longfield to perhaps elaborate on what he's proposing before I make a decision on this.

**The Chair:** I think we're just going to stop for one second.

Okay. So where were we? We were at Mr. Longfield, is that right?

**Mr. Lloyd Longfield:** Yes.

On the question of who was going to be in the fourth slot, my understanding was that we have a new commissioner coming in. We could talk to the new commissioner, who would need to have some committee time anyway. We would like to have some committee time to talk to the new commissioner. We could relate that to some of the questions we have from CEPA.

I think the overall role of the commissioner is a very different discussion. It would take a lot more than a two-minute discussion. I'm on public accounts, and we've also looked at the role of the commissioner there and talked to the commissioner and the Auditor General. They both said that because the commissioner is in the Auditor General's department there are good efficiencies there. If we had a two-hour slot to have the new commissioner come in, and had some time for him to prep to come in and talk to us, that's where I would rather have gone with the two-hour slot we have.

• (1735)

**The Chair:** Does anybody else want to address this issue? No? Okay.

Just to reiterate, Ms. Collins, you want to have one meeting on the role of the commissioner. It's not as part of the CEPA study. It's a separate meeting, and at the first opportunity, I imagine. That's where you stand on this. Am I correct?

**Ms. Laurel Collins:** Yes. Could we call the question?

**The Chair:** Yes. Okay.

So let's have a vote.

**Mr. Peter Schiefke:** Was there an amendment moved, Mr. Chair? I don't know where we are right now.

**Mr. Lloyd Longfield:** I had an amendment that we have the new commissioner come in.

**The Chair:** Okay.

So now we have a discussion on the amendment, I imagine?

**Mr. Dan Albas:** Mr. Chair, you did say you were calling the question. Both of these gentlemen had the opportunity—this is on a point of order, by the way—in debate to either put forward an amendment—

**Mr. Lloyd Longfield:** I did put forward an amendment.

**Mr. Dan Albas:** I didn't hear you move it. I heard you say you'd talk about one.

Mr. Chair, you called the question.

Look, we'll be getting cut off here pretty quickly. Let's just let this go—

**Mr. Lloyd Longfield:** I think we're over time.

**Mr. Dan Albas:** Maybe you should talk to your colleague about interrupting people.

**The Chair:** Let's hold on a second. It's a little difficult when we're all remote, but I'll be right back.

Colleagues, I'm told that it wasn't a formal amendment. We're dealing with the main motion, so we're going to have to vote on the main motion.

Ms. Duford, could you do a roll call vote?

**The Clerk of the Committee (Ms. Isabelle Duford):** The vote is on Ms. Collins' motion.

(Motion agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** As I understand it, according to what Ms. Collins said, this is one meeting on the issue. It doesn't exclude inviting the commissioner, and we're not making a recommendation. It's just a two-hour hearing.

Mr. Jeneroux, go ahead.

**Mr. Matt Jeneroux:** I'll be brief. I want to put forward my motion. As we're going over time, I'd hate for my friend, Mr. Schiefke, to miss his interview, so I will hold it until the next meeting. However, Mr. Chair, I do request that we have that meeting in public. I want to make sure that we have that conversation in public and not in camera.

**The Chair:** We'll see what happens on Wednesday. If we have to cancel the meeting, the Wednesday meeting will be on the 17th, and on the 22nd we'll start with some future business. Then we'll get into the consideration of the work plan for the plastics study, drafting instructions for the enforcement study, and consideration of the ze-

ro-emissions vehicles report. We'll see how long it takes us to get through those items.

Is that good?

● (1740)

**Mr. Dan Albas:** Thank you, Mr. Chair.

**The Chair:** Thank you for your patience, colleagues, and hopefully, Wednesday we'll be voting electronically, and we can start our meeting on time.

The meeting is adjourned.

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