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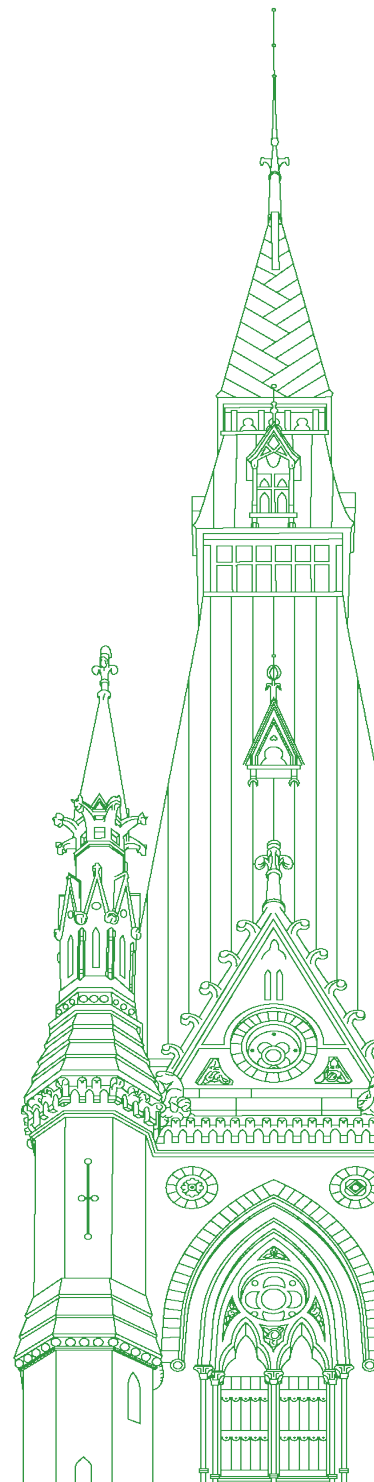
Standing Committee on Environment and Sustainable Development

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Tuesday, September 22, 2026

Chair: Shannon Miedema



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• (1530)

[English]

The Chair (Shannon Miedema (Halifax, Lib.)): Good afternoon, everybody. This is meeting number 46 of the Standing Committee on Environment and Sustainable Development.

I extend to everybody a warm welcome back to Ottawa after a great summer.

I'd like to also extend a warm welcome to our new clerk for the environment committee, David Chandonnet, who is back—

Voices: Hear, hear!

The Chair: Yes, we're very happy to have David back with us after a few years of absence. He is back to serving standing committees. We're really excited to have him and his experience.

The first hour of this meeting is public. The second hour will be in camera.

Since we are returning from a longer adjournment, I ask all in-person participants to consult the guidelines written on the cards on the table. These measures are in place to help prevent audio and feedback incidents and to protect the health and safety of all participants, including our wonderful interpreters. You'll notice there's a QR code on the card; it links to a short awareness video that you could always watch at your convenience later.

For the first hour, we are undertaking the clause-by-clause consideration of Bill C-244, an act to amend the Canadian Environmental Protection Act, 1999 and the Wrecked, Abandoned or Hazardous Vessels Act, which was put forward by MP Weiler, who is here with us this afternoon.

Present to answer questions are several government officials. From the Department of the Environment, we have Stephanie Lane, acting director general, legislative and regulatory affairs. From the Department of Transport, we have Sean Rogers, executive director of legislative, regulatory and international affairs, who is with us online. In person, we have Michelle Sanders, executive director, navigation protection and environmental programs; Colin Henein, director of marine environmental policy; Joanne Weiss Reid, director of operations and regulatory development; and Debora Sarmento, legal counsel. From the Canadian Coast Guard, we have Josée-Annie Verville, director of monitoring and compliance.

Thank you to all of our officials for being here with us today.

I'd like to provide members of the committee with a few comments on how committees proceed with the clause-by-clause con-

sideration of a bill. This is an examination of all the clauses in the order in which they appear in the bill. I'll call each clause successively, and each clause is subject to debate and to a vote.

If there is an amendment to the clause in question, I'll recognize the member proposing it, who may explain it. The amendment will then be open for debate. Amendments will be considered in the order in which they appear in the package each member received from the clerk. Amendments have been given a number in the top right corner to indicate which party submitted them. During debate on an amendment, members are permitted to move subamendments.

I thank the members for their attention and wish everyone a productive clause-by-clause consideration of Bill C-244.

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

(On clause 2)

The Chair: Go ahead, Mr. Grant.

• (1535)

Wade Grant (Vancouver Quadra, Lib.): Thank you, Madam Speaker—that is, Madam Chair. I'm a bit rusty, as you can see.

I'd like to present that Bill C-244, in clause 2, be amended by replacing lines 5 to 10 on page 1 with the following:

2 Section 125 of the Canadian Environmental Protection Act, 1999 is amended by adding the following after subsection (6):

(7) For greater certainty, for the purposes of this section, a disposal occurs whether or not any act or omission resulting in disposal is intentional.

I can explain why I put that forward.

I agreed with the sponsor when he said that a strict liability framework was always intended by the act. Indeed, the offence and other disposal offences in the CEPA are already strict liability offences, as evidenced by the availability of the due diligence defence in section 283 of the CEPA. Clarifying this makes sense, but how it's clarified is important, as it should avoid creating inadvertent issues for interpretation of the act.

The Chair: Thank you, Mr. Grant.

Shall G-1 carry?

Mel Arnold (Kamloops—Shuswap—Central Rockies, CPC): [Inaudible—Editor]

The Chair: Is there debate on the amendment?

Mel Arnold: If I could...yes. It's been a long time since I've been involved in legislative debate as well.

The amendment adds:

For greater certainty, for the purposes of this section, a disposal occurs whether or not any act or omission resulting in the disposal is intentional.

What you're saying is that whether it's an accidental sinking or an intended disposal.... Would any of that apply to what you're proposing to add here?

Wade Grant: I'm sorry. Could you reread the question? I didn't quite hear all of it.

Mel Arnold: This amendment you've proposed would add a subsection 125(7), which would read:

For greater certainty, for the purposes of this section, a disposal occurs whether or not any act or omission resulting in the disposal is intentional.

Would the liability apply to an accidental sinking or any action that could cause accidental disposal?

Wade Grant: I can ask those who have helped with this to explain.

Stephanie Lane (Acting Director General, Legislative and Regulatory Affairs, Department of the Environment): Section 125 of the Canadian Environmental Protection Act applies to disposal-at-sea activities that are currently regulated by the London protocol. The additional subsection proposed by the government would merely indicate that it's a strict liability offence and create that "for greater certainty" provision, so, yes, it will apply to activities regardless of whether or not they are intentional. The provisions apply to certain activities—and I can read the provision in section 125 to indicate to what it applies—but it doesn't apply to land-based activities. It applies to disposals at sea or from a platform at sea.

Mel Arnold: Thank you. That really doesn't clarify it for me. Would an accidental sinking of an almost derelict vessel still be considered, or potentially be considered, a disposal?

Stephanie Lane: I will go and check the types of waste to which this section applies. Section 125 of the act has specific provisions and specific types of waste to which it applies. If the chair would permit me a minute, I will go and take a look at that.

The Chair: We'll move on to Mr. Bonin, and then we'll get your answer when you have it.

[Translation]

Patrick Bonin (Repentigny, BQ): Thank you, Madam Chair.

I just need some clarification. When I read the French version of the new subsection 125(7) of the legislation proposed by amendment G-1, it says at the end, "*en cause n'est pas intentionnel*". Yet the English version doesn't contain any negative form, so it's intentional. I don't know whether the French version contains a double negative that makes "*n'est pas intentionnel*" mean "*intentionnel*". However, the English and French versions seem to differ on this point.

• (1540)

Stephanie Lane: The English version refers to an act or an omission, whether intentional or not. According to the writing principles, it has the same meaning in English and French.

Patrick Bonin: If you're sure, I'm really glad to hear it. I was wondering about the negative form in French. I'll leave it up to the legal expert.

[English]

The Chair: Go ahead, Mr. Ross.

Ellis Ross (Skeena—Bulkley Valley, CPC): Thank you, Madam Chair.

My question is along the lines of what MP Mel Arnold was saying. It's around the definition of disposal at sea and whether or not it means any act resulting in disposal, intentional or not.

Does that include a sinking, like what MP Mel Arnold was talking about, whether it be accidental or even an act of vandalism or theft, and then the vessel sinks? Does this amendment actually cover that, or would that be a different clause altogether?

Stephanie Lane: I have the definition of "waste or other matter" to which this prohibition applies. It applies to "Ships, aircraft, platforms or other structures from which all material that can create floating debris or other marine pollution has been removed", so it does apply to ships, aircraft, platforms or other structures, as MP Arnold's question indicated.

As I understand it, the intention of the private member's bill and also the government's motion is to confirm that it doesn't change the application of the disposal provisions, but it does reinforce that these are strict liability offences. They don't require someone to intentionally do the activity, and they allow for the availability of the due diligence defence. That's the intention of the "for greater certainty" addition.

Ellis Ross: To follow up, the due diligence is making sure that the bilge pump works, that it's secured to a dock and that the battery is actually there, in place, to make sure that the bilge pump is working. However, because of some act of vandalism, maybe it's untied or maybe the battery is disconnected—and this does happen, by the way, especially where I'm from—the vessel sinks. Is the owner, then, still liable for this unintentional disposal at sea? It's really a sinking. It's not really a disposal at sea, in the context of what I'm familiar with, at least.

Stephanie Lane: As I indicated, the availability of the due diligence defence will be really case-specific. I'm not really in a position to speak to how an enforcement officer...or how that might be enforced. Generally speaking, for strict liability offences, it's up to the Crown to prove that the act or omission occurred. Then the burden shifts to the individual who is being accused to demonstrate that they took all due diligence to prevent that offence from occurring. Again, I'm not really in a position to speak to the specific facts that you provided, but hopefully that clarifies.

The Chair: Mr. Arnold, go ahead.

Mel Arnold: I think your answer clarifies when this would apply, but it doesn't clarify how an individual could be exempt from this application of "intentional" or not. If the enforcement officer and the courts chose to believe that the owner of the vessel did not take due diligence to protect the vessel from vandalism, could they still be liable for an illegal or unauthorized disposal?

• (1545)

Stephanie Lane: I'm not able to answer the specific facts of the question. One thing I would say is that the application of section 125 of the Canadian Environmental Protection Act is fundamentally not changed by the proposal. It adds this "for greater certainty" provision, so all available defences that are in existence today would also be available should this amendment and this private member's bill pass.

The Chair: Okay. Shall G-1 carry?

(Amendment agreed to)

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: We now move to clause 3.

Is there someone who wishes to move CPC-1?

Mr. Arnold, go ahead.

Mel Arnold: This amendment states that Bill C-244, in clause 3, be amended by replacing lines 1 to 6 on page 2 with the following:

34.1 (1) The owner of a vessel who transfers ownership of the vessel is deemed to remain an owner for the purposes of this Part until they notify the Minister of the transfer.

(2) The owner must, in writing, notify the Minister of the transfer of ownership within 14 days.

(3) The notice must include the name and contact information of the new owner.

Madam Chair, if I can explain the reasoning for submitting this amendment, it is basically from my 40 years of experience in the boatbuilding and boat repair business and seeing the number of vessels that are out there for which the registration of transfer is not completed because, as soon as it is done, the buyer receives notice from federal and provincial tax departments that they now owe taxes unless they've already been paid to a dealer in a dealership sale.

Through my shop over those years, and in other facilities, the number of private vessels that I saw that were transferred, often-times more than once, to a new owner with no record-keeping whatsoever made it almost impossible for some of the new owners to track down who may have originally been the last registered owner of the vessel.

This amendment would basically incentivize the seller to notify the department of the transfer, because once that is done, it should absolve them of liability for the vessel. They wouldn't have to go through the process that we're probably going to discuss, which is having to determine whether the new owner is qualified or not and the state of the vessel, which often requires a marine survey that can cost thousands of dollars, even for a small vessel. It simply would require the seller to provide the name and contact information of the buyer.

The purpose of this bill really is to track liability, and I believe that's what the sponsor of this bill is really looking for. It's to track the ownership and the liability of any vessel. This would make it very simple. It's just a matter of the seller providing the new owner's name and contact information. Then the government would have all of the resources to find that new owner, and they are liable.

I speak to this from my personal experience, which included the theft of a vehicle from my yard. That vehicle was stolen at three o'clock in the morning, never to be found again, but within a week's time the insurance on that vehicle was due for renewal. I thought that because it didn't belong to me anymore, I probably didn't need to renew the insurance. I checked with my insurance agent, and they said I actually did need to renew the insurance, because until it was either paid out by the insurance company, which was ICBC at the time, or I recovered it, if that vehicle was parked on the side of the highway and it rolled out and injured or killed someone, I was the registered owner and therefore I was responsible. I had to re-insure a vehicle that I wasn't in possession of and probably never had a chance of possessing again. Because I was the registered owner, I still had to pay for the insurance on it until the insurance company paid me out.

• (1550)

If the seller can provide the buyer's information, that should be enough to absolve them of the liability, and the government would have the ability to track the new owner. That is the reasoning and the rationale for this amendment.

The Chair: Thank you, Mr. Arnold.

I'm told that this proposed amendment has to be moved by an existing member of the environment committee.

Thank you, Mr. Bexte.

If CPC-1 is adopted, G-2 cannot be moved due to a line conflict. As *House of Commons Procedure and Practice*, fourth edition, states in section 16.71, "Once a line of a clause has been amended by the committee, it cannot be further amended by a subsequent amendment as a given line may be amended only once." That is just for clarity.

Is there any debate on this proposed amendment? If not, we shall take it to a vote.

(Amendment negated)

The Chair: Mr. Grant, would you like to move G-2?

Wade Grant: Thank you, Madam Chair.

It is that Bill C-244, in clause 3, be amended by replacing lines 1 to 6 on page 2 with the following:

34.1 (1) It is prohibited for an owner of a vessel to transfer ownership of it to a person unless the owner has taken the following steps to satisfy themselves that the person has the resources and intent to maintain, operate and dispose of the vessel in a manner that prevents it from becoming a wreck or hazard or from becoming abandoned:

(a) they have disclosed to the person, in writing, information relating to the condition of the vessel; and

(b) they have obtained from the person, in writing, confirmation that the person has the resources and intent to maintain, operate and dispose of the vessel in a manner that prevents it from becoming a wreck or hazard or from becoming abandoned.

(2) Subsection (1) does not apply in respect of vessels, other than pleasure craft, that are 24 m or more in length.

The amendment maintains the original intent of the clause by prohibiting the transfer of a vessel to individuals without the means or intent to properly maintain or dispose of the vessel, while making the provisions more practical to implement and enforce. For example, the amendment would remove the requirement for the seller to assess a buyer's ability or intent to maintain a vessel, which raises concerns over how sellers could determine the buyer's ability, resources or intent to operate, maintain or dispose of the vessel. Instead, the amendment introduces two clear requirements that the owner of a vessel must fulfill when transferring a vessel: They must disclose to the buyer, in writing, information relating to the condition of the vessel, and they must obtain written confirmation from the buyer.

• (1555)

The Chair: Thank you, Mr. Grant.

Is there any debate on the amendment?

Go ahead, Mr. Leslie.

Branden Leslie (Portage—Lisgar, CPC): Thank you, Madam Chair. It's great to see everybody back for another fall session.

Given that we broke before summer after hearing the testimony from the sponsor, I had a lot of time to review this legislation and, in turn, some of the amendments. If you'll bear with me, Madam Chair, I have a number of questions that I plan to direct towards Mr. Grant as the parliamentary secretary and the mover of this motion.

I'd like to start by highlighting what the original Bill C-244, this legislation, said. It said that the seller could not transfer a vessel if the seller knew or was reckless as to whether the buyer lacked the ability, resources or intent to care for it. This government amendment instead states that the seller must take two steps, as the parliamentary secretary outlined. He called those "clear requirements". I'm hoping to get some clarity on just how clear those are.

This amendment would mandate that the seller must disclose information about the vessel's condition in writing and get written confirmation from the buyer that the buyer has the resources and intent to maintain, operate and dispose of it responsibly. To me, this raises a question: If the buyer signs a declaration, has the seller simply done enough?

Just for argument's sake, I have a hypothetical case here. Let's say I'm selling a 20-metre fishing boat that could cost \$20,000 to \$30,000 to dispose of properly, but I choose to sell it for one dollar. I can tell the buyer in writing that the vessel is in poor condition. He then signs a piece of paper saying that he has the resources

or intention to maintain and dispose of this vessel properly. If the buyer signs this statement and I don't ask any further questions and I take him at his word by signing this statement—as would be the legislation if this amendment were to pass—is that all that needs to be done to comply with this legislation as amended through what you're proposing here?

Wade Grant: I thank you for the question, but I'm going to pass it to the officials to answer.

Colin Henein (Director, Marine Environmental Policy, Department of Transport): Thank you for the question.

The intention that we understand in this bill is really to set some standards that would allow an informed decision on the part of the buyer and the seller to satisfy themselves that the buyer does have those resources and intent. The amendments aren't really prescriptive about how that check has to happen. They are about ensuring that there is disclosure by the seller of the condition of the vessel and that the buyer knows what they're getting into and therefore is taking a decision as to whether that vessel is within their capacity and is making the declaration.

To put it simply, the buyer can make that statement in the circumstance that you lay out, but they would do it knowing what they were getting themselves into. The seller would need to be satisfied through that process that the buyer has the resources and intent.

Branden Leslie: Thank you for that.

It still leaves a lot of question marks. If I'm the seller of this vessel, how satisfied I have to be to be satisfied is not a very strong legal position for future potential ramifications.

Just to be crystal clear, this amendment does not expressly require me to inspect the buyer's finances, insurance or facilities. It just requires me to have him write something down, and then that is enough for me to be covered legally in the event that it is not followed through. Is that correct?

Colin Henein: If the seller is satisfied through the person's declaration that the person has the resources and intent to maintain, operate and dispose of the vessel, then they will have met the requirements of the clause.

Branden Leslie: Who is the arbiter of that down the road? Mr. Arnold and I might be deeply different in how we judge the satisfactory nature of the claims made by the buyer. Who decides later on whether I should or should not have been satisfied?

• (1600)

Colin Henein: In the way the bill is drafted, the owner takes the steps to satisfy themselves that the person has the resources to maintain, operate and dispose of the vessel.

Branden Leslie: It's not unreasonable for the seller to then be asking for financial disclosures or for evidence of ownership of property where the vessel could be stored. In theory, there could be a potentially huge onus on the seller to reach his or her own level of satisfaction based on what the law would be if this amendment comes into force.

Colin Henein: Those are questions for an interpretation that I'm not really able to make with specific circumstances here, but what I can do is point to the text, which says that the vessel cannot be transferred unless those steps are taken to satisfy the seller as to the person's resources and their intent to maintain and operate.

Branden Leslie: If I'm either a retail seller or somebody planning to sell his or her boat in the future, how would I be satisfied with this law? For the text you just described, how would I be satisfied with that as a comfort level in a future sale?

Colin Henein: I'm not sure I can speak to how any specific person in a situation like that would or wouldn't be comfortable. I'm just trying to clarify—

Branden Leslie: Should it be more prescriptive, then? The problem I see here is that it's not prescriptive at all. It's very subjective.

Do you want to jump in on that one, Mel?

The Chair: We have Mr. Ross if you're finished.

Branden Leslie: No, I could keep going.

The original bill as drafted said that the seller of the boat had to determine whether the buyer had the “ability, resources or intent” to take care of the boat. Now, for example, let's say that I ask the buyer for a proof of finances, and they say they have a hundred grand sitting in the bank. Then they say they intend to restore this old commercial vessel, but they have absolutely no idea of how to do that. They might have the intent and the money, but no expertise to maintain or oversee such a project of restoring the vessel.

Why would the government, through this amendment, be deleting that particular word, “ability”, from the initial drafting of Bill C-244?

Perhaps I'll ask the government first.

Wade Grant: I will keep with the officials, please.

Colin Henein: There were challenges that were identified with the issue of “ability”. There were a couple of things.

First of all, the seller may not have the information at hand that they need in order to assess the buyer's ability. In particular, the requirement to assess the buyer's ability may be applied inconsistently between sellers, or it could lead to risk-averse decision-making, and that could lead to differential treatment of certain individuals or groups, which could have raised concerns from a human rights perspective. From that perspective, “ability” was seen to be something that didn't need to be included in the amended text.

Branden Leslie: You can see how those two remaining items that are required—resources and intent—and the lack of clarity as to what that actually means beyond just perhaps signing a piece of paper would also lead to adverse views as a seller. I don't understand why you'd cherry-pick “ability” when the other two clearly still leave a lot of questions of potential liability for the seller, depending on their own comfort level and due diligence. Why did you pick that one instead of all three of them?

Colin Henein: Some of the issues around ability have to do with the human rights aspect of whether or not someone has the ability to do something. Resources and intent are things that can be confirmed in writing by the buyer on an informed basis, based on the vessel's condition.

Branden Leslie: Okay, but what does “resources” mean? Is there a legal definition in the existing act?

Colin Henein: No, there is no definition of “resources” in the act.

Branden Leslie: Then it could be money or the ability to get money by taking a loan, or it could be insurance or a shipyard or equipment. It could be me just saying I have resources. Is it that any of those are applicable here?

● (1605)

Colin Henein: The plain language definition of resources would apply in interpreting the act.

Branden Leslie: It still goes back to the idea that I just have to be comfortable with the buyer saying that they have the resources, but I might still go to jail later if I don't believe that enough. I have no ability to force them to hand over to me any evidence of any of these resources. Is that correct?

Colin Henein: I'm going to allow my colleague to speak to this from an implementation perspective.

Joanne Weiss Reid (Director, Operations and Regulatory Development, Department of Transport): If I can speak to the enforcement issue, if the seller discloses the status of the vessel and the buyer can say that they have the resources to take care of the vessel, in the case of an enforcement, we would look at this as a piece of evidence. We wouldn't jump to an enforcement measure until we actually did an investigation and considered all of the other information. In this case, we would consult with the municipality, provinces and other community members to see the circumstances before we would take any enforcement action.

Branden Leslie: These are very exhaustive investigations, it sounds like.

You mentioned “a piece of evidence”. To me, when you say that, it means that if the buyer says on a piece of paper that they have the ability—well, not “ability”, but the resources and intent—to manage this vessel, and they say those words, that's only a piece of evidence. It's not enough to avoid possible enforcement as the seller. Is that correct?

Joanne Weiss Reid: We have other enforcement measures under the act in terms of requiring the owner to take care, let's say, of a dilapidated vessel. We do have enforcement measures if owners fail to maintain their vessels.

Branden Leslie: What would be an objective measure of resources? You're the enforcement branch, it sounds like, so hopefully at some point there will be an objective measure of that terminology. What would that be?

Joanne Weiss Reid: The seller would have to satisfy themselves that the owner has the resources. Disclosing the status of the vessel would make the buyer aware of any circumstances surrounding the vessel, and they would then be able to say that they have the resources to care for the vessel or to maintain the vessel.

In terms of what those resources would be, as I said, if there was a situation of a dilapidated or abandoned vessel or the vessel was left to sink or become a wreck, in those cases we would look at all of the circumstances, including this piece of evidence, which is written evidence, and we would consider all those in terms of enforcement measures.

Branden Leslie: If I'm a seller of boats or plan on doing that, I would be worried right now, because I might be the first test case. None of this is clear in terms of how satisfied I internally need to be as a seller. Will I just feel guilty but not have an enforcement action taken against me if the vessel that I sell is later found sunk?

I worry that there will be one enforcement and the jurisprudence will be set. Then for everybody else there will probably be a chill around selling boats, which this particular amendment may already cause. Once that bar is set by that first test case, so to speak, I'm deeply concerned that everybody else is going to be in the same position or in a worse position, because there's no clarity. What are "resources"? There's no objective clarity within any of this, so should this amendment pass, I really fear for the person who will be the guinea pig test case.

Joanne Weiss Reid: I'd just like to stress that the way it is written here is that the requirement is for the seller to disclose, so we would focus on whether the seller disclosed. To the best of their knowledge, did they disclose the condition of the vessel at the point of sale? That is the requirement.

Whether they were satisfied is the second piece. It's whether they were satisfied that the buyer had the resources to take care of the vessel.

Branden Leslie: A lot of these assumptions are in the transfer of a previously owned vessel. Let's move to a boat dealer.

Given these same provisions, how would I know if this individual is going to be able to properly dispose of this vessel in 30 years? I don't know the definition of "resources". I don't know how many costs might be associated year after year with the particular vessel I'm trying to sell. As a dealer, how would I have confidence in the person I'm selling to under pretty much any circumstances, given the vague nature of this language?

• (1610)

Colin Henein: At the end of the day, the disclosure needs to be made by the dealer, so in this case the dealer would be providing information on the condition of the vessel, and they would need to obtain written confirmation that the person has the resources and intent to deal with it. This is governing the transfer of the vessel. It's not governing the whole lifetime of the vessel for 30 years into the future. The new owner of the vessel will be responsible for all of the provisions of WAHVA relating to not abandoning the vessel or disposing of it properly.

The test here is really that steps have been taken by the owner of the vessel to satisfy themselves, and it's not open-ended. The test

that they have to do is that they have to disclose the condition of the vessel and they have to receive the written confirmation from the buyer.

Branden Leslie: What if the buyer lies? Are there any specific provisions that are actually enforceable against the buyer?

A seller might reach this random subjective level of satisfaction, and if they were by being lied to, I feel the seller is still in a very difficult position. Are there any consequences for the buyer for making a false claim?

Colin Henein: In general, it's not legal to make fraudulent claims—

Branden Leslie: But someone might just write on a piece of paper that they have enough resources, and if I'm satisfied as the seller that this is enough.... That could just be a lie, but I wouldn't call it a crime.

Are there zero consequences as a potential outcome for a buyer making a misleading declaration that's pretty benign, such as saying that he has the resources? Maybe he's a gambler and maybe he lost those resources the next day, but on the day he wrote that down, he did.

Colin Henein: There's nothing specific in the text of the bill relating to that scenario.

Branden Leslie: Does that seem concerning? Do you see that the seller has a lot of obligation here on trust?

Colin Henein: That's a question for the members.

Branden Leslie: Government, is there any...?

The Chair: We'll move to Mr. Ross, or are you—

Branden Leslie: No, no, I still have many more. I was just curious as to why the buyer wouldn't have an obligation here.

The Chair: Continue, Mr. Leslie.

Branden Leslie: Okay. The legal obligation is on the seller to obtain the buyer's written confirmation that they have the resources, but just to be clear, there is no offence if there is any sort of misleading statement. Is that correct? The buyer can mislead the seller in any way they want.

Colin Henein: There's nothing in the bill that would govern that—or in the amendment, I should say.

Branden Leslie: What if, on the seller's obligation part, in my description of the state of the vessel, I just put "sold as is"? Would that suffice as the seller?

Colin Henein: The test here would be whether there was disclosure of the condition of the vessel.

Branden Leslie: It's "as is".

Colin Henein: My understanding is that this wouldn't describe the vessel. That would describe the terms of the sale.

Branden Leslie: Okay. It is as it is. I mean, that's a pretty good description. You look at it, and it is as it is.

Colin Henein: At that point, the buyer would have to make it.... I mean, that would be the information available to the buyer that would allow them to decide whether or not they wanted to make their declaration related to their capacity to take on the vessel. I think there's a question of interpretation as to whether that would be a description of the condition of the vessel or not.

Branden Leslie: That future interpretation of the test case...yes.

The amendment says that the seller must provide written "information relating to the condition of the vessel", as you just described there. It does not say that it has to be specific as to defects. It does not say that a marine survey has to be undertaken, or a prescribed disclosure form or, frankly, what would be described as being fully complete and accurate in any way. Does this not lead to clear problems in consistency from the seller's perspective and in any clarity as to what actually needs to be disclosed by the seller?

Colin Henein: Ultimately, the intention is to ensure the buyer can make an informed decision. The department, if this bill became law, would, in explaining the obligation, provide some guidance around what issues need to be raised or how to describe the condition of a vessel in general terms. It wouldn't be able to do that for every specific case, but some guidance could be provided to enable the buyer to make an informed decision.

• (1615)

Branden Leslie: Okay. A marine survey would be the most exhaustive version of that. That's several thousand dollars that the seller would have to take on prior to transferring the boat to that buyer, because it seems entirely reasonable that the seller of the vessel might not have a detailed list of every possible defect within the vessel unless they had that marine survey. Is that correct?

Colin Henein: There's a sort of a presupposition there about whether or not a survey is needed. What's needed by the text is the disclosure of information relating to the condition of the vessel.

Branden Leslie: Without the confidence of a third party who's an expert, I might accidentally, as the seller, not disclose everything that could be considered by the buyer to be a future defect with the vessel. It happens with cars. It happens with any other type of product all the time, unless you have a third party look at it. As the seller, I still think there is a reasonable fear that you might not be providing enough detailed and accurate information unless you pay thousands of dollars for the marine survey.

Colin Henein: I'm just struggling to try to frame that more as.... Is there a question, sir, that I'd be happy to try to answer for you?

Branden Leslie: If this amendment and this bill become law, is getting a marine survey done before they sell the vessel the most reasonable way for the seller of any future vessel in Canada to protect themselves from any legal enforcement?

Colin Henein: I'm not sure that I can answer the question as to what is the most reasonable way. The amendment would require the disclosure of the condition of the vessel by the seller to the buyer to allow them to make an informed decision. The buyer then is in a position to determine whether they have the resources and intent. That is the premise—that I understand—of the amendment.

Branden Leslie: Then this amendment would enable basically a transfer of written documents between the buyer and the seller outlining the state of the vessel and whether or not, in some vague lan-

guage, you have the resources and intent to maintain and dispose of the boat properly, but it doesn't have to be filed with anybody. How long should the buyer and seller be expected to hold on to these pieces of paper? Is there a legal obligation? How long should they keep them?

Colin Henein: If there's no provision in the amended statute that would give any kind of requirement to keep it for any specific amount of time, the obligation is to disclose it and receive the confirmation from the person and for the seller to satisfy themselves of that. There's no specific provision there. From an implementation perspective, the seller would be wise to provide copies of those documents. That could be done in various ways, but there's no specific amount of time envisioned in the statute itself.

Branden Leslie: The government is trying to exempt non-pleasure boats that are 24 metres and longer. A 23.9-metre commercial fishing vessel would be covered, but a 24.1-metre commercial fishing vessel would be exempt.

Why would the environmental risk of two inches change anything in terms of the application of this law?

Colin Henein: The amendment would not apply to vessels over 24 metres in length, other than pleasure craft, because that's consistent with a threshold that's already established under the small vessel regulations of the Canada Shipping Act, 2001. Those vessels over 24 metres in length are subject to the international certification regime. Therefore, they're less likely to be transferred irresponsibly. That's why that particular threshold was selected. It's because it aligns with additional regulatory requirements that lower the risk of vessels over that size being abandoned.

• (1620)

Branden Leslie: When Transport Canada officials appeared at this committee in June, they said in the initial testimony that if the sale is made outside of Canada, it would not be regulated by the Wrecked, Abandoned or Hazardous Vessels Act. For example, if a Canadian owner were to take a boat to Washington state, a transfer legally occurred in the United States by selling it to a American buyer.

Does this amendment in any way close the foreign-sales loopholes that officials identified back in June?

Colin Henein: The amendment is to the Wrecked, Abandoned or Hazardous Vessels Act, and that act would not govern a sale that took place in the United States. If a vessel is later brought to Canada and is abandoned or wrecked, then the provisions of the act would apply when the vessel is in Canadian waters. However, if the transfer occurred in the U.S., it would not be regulated under this provision.

Branden Leslie: If you're worried about this legislation, what would prevent both a buyer and a seller from making the transaction outside of Canada or Canadian waters?

Colin Henein: This legislation doesn't regulate transfers that are made outside of Canada.

Branden Leslie: If the seller fails to get the paperwork, as identified in this legislation, they could face a monetary penalty of up to \$50,000 as an individual, even if the boat is never abandoned and never causes any environmental harm.

How is a penalty of up to \$50,000 justified when the offence could be nothing more than failing to get the right paperwork, without any real confidence in what is necessary to receive?

Colin Henein: I'm going to invite my colleague to speak about this from an implementation perspective.

Joanne Weiss Reid: As I mentioned previously, there's a graduated approach to enforcement. We approach enforcement by exploring the case, and then the penalty or the enforcement action would be appropriate for the circumstance.

In a case where there's a failure to disclose, we would look at the circumstances surrounding that, and our graduated enforcement approach goes from a warning—a verbal or written warning—up to an administrative monetary fine or a penal prosecution. It would not necessarily default to a \$50,000 fine. We would consider all the circumstances surrounding the case.

Branden Leslie: Given the uncertainty of the amendment and, in turn, this bill if passed, do you expect to deliver a lot of those warnings since people probably will not understand what their obligation was supposed to be at the time of sale?

Joanne Weiss Reid: Can you repeat that question?

Branden Leslie: There's a lot of uncertainty. I think we can all acknowledge that it's very unclear what my obligations are beyond my subjective feelings of how comfortable I am. You mentioned that there's a sliding scale of enforcement, from very high monetary penalties to as low as a warning, after what sounds like very exhaustive investigations.

Given the language that's being inserted by the Liberal government amendment to this bill, do you expect that there would be a lot of warnings given out? It's pretty reasonable, after you investigate, that both the buyer and the seller didn't fully understand their obligations because it wasn't very clear in the law.

Joanne Weiss Reid: I wouldn't be able to predict that at this time.

Branden Leslie: I will pass it on to any of my colleagues who have more questions.

The Chair: Thank you, Mr. Leslie.

Mr. Ross.

Ellis Ross: Thank you, Madam Chair.

Having been a boat person and a coastal person basically my whole life and watching these sinkings and these transfers of ownership and sales, I'm finding it hard to understand the enforcement of this at the sale level as well as the enforcement level.

Madam Chair, who am I talking to? Am I talking to the mover or am I talking to...?

The Chair: You can ask a question and—

Ellis Ross: Is it to anybody or just in general, or do I ask and then we decide?

The Chair: Just ask your question and we'll go from there.

Ellis Ross: Okay. Great.

Owning a boat or seagoing vessel is not like owning a car or a truck. It's different. Number one, they're notorious money pits—anybody who owns a boat knows this—depending on the kind of boat you own.

When we're talking about proper resources, as a seller, how much am I supposed to understand and how much am I supposed to get out of the possible buyer? Do I go as deep as asking, “Do you have an operator's card for a recreational boat? Do you have a mate's ticket? Do you have a captain's ticket? Do you have a deck-hand ticket? Have you ever owned a boat?” Since it's a money pit, do I ask, “How much money do you have?” If I'm going to sell to Mr. Leslie, do I ask, “Do you have access to zinc and welding capabilities to make sure that electrolysis doesn't happen?” I know he doesn't know what I'm talking about—

• (1625)

Branden Leslie: I can weld.

Ellis Ross: Can you weld?

Branden Leslie: Yes.

Ellis Ross: Do you have any zinc?

Branden Leslie: No.

Ellis Ross: Okay. Is that enough? I'm sure he's not going to show me his bank account, but I can possibly tell him that annually, on maintenance costs alone, I've spent \$5,000. That's on maintenance costs, not operating costs. Do you have \$5,000 a year to maintain this boat, yes or no? I'm not talking about the oil filters, the gas and everything it takes to actually be running on the water as you're going along.

How far am I supposed to go? I ask because I'm assuming that a year after I sell Mr. Leslie my boat, it sinks, and they go through the checklist of what I tried to check out with him and I missed something unintentionally. Do I get charged because of the first amendment, talking about “For greater certainty, for the purposes of this section, a disposal occurs whether or not any act or omission resulting in the disposal is intentional”? Even marine surveys don't get it right. You may spend \$1,000 on it, but even they miss stuff.

How far is the buyer supposed to go? How prescriptive do they have to be? In what form do they have to show this to, I assume, Environment Canada?

Colin Henein: The amendments are not prescriptive when it comes to the form of the disclosure of the vessel's condition or to the form of the written confirmation from the buyer of their resources and intent. The intention is to ensure that the buyer is making an informed decision, and that the seller satisfies themselves of the buyer's resources and intent at the time of the transfer of the vessel.

The responsibility to then maintain the vessel or operate it responsibly passes to the buyer, and that doesn't change. That's already part of the provisions of WAHVA. What's added here is this process that occurs during the transfer of the vessel between the seller on the disclosure side and the buyer on the confirmation side.

Ellis Ross: That actually makes a lot of sense.

On the time period, because we're talking about ongoing liability, it's my understanding then that if I do everything within the entirety of proposed section 34.1 as a seller or as a buyer and everything's in place—it's in writing and it's signed—the liability for me as a seller ends, regardless of what happens. That's regardless of the amendment we just spoke to and just approved here previously. That's when my liability ends. It's when we get those, I assume, one or two documents outlining these provisions in proposed section 34.1.

Colin Henein: The liability actually passes with the transfer of the vessel. When the buyer becomes the owner of the vessel, when the sale is concluded, that's when the liability transfers for the provisions of WAHVA that prevent the vessel from...you know, they're not supposed to let it sink and those kinds of provisions. What's being regulated here is a check that needs to happen on the part of the seller by disclosing the condition of the vessel and receiving confirmation of the capacity. Then the transfer occurs, and with that, the liability would also move.

• (1630)

Ellis Ross: A year later, when the boat sinks—

Colin Henein: The liability is with the owner.

Ellis Ross: It's with the new owner.

Colin Henein: That's correct.

Ellis Ross: Nothing goes back.

Colin Henein: That's right, but the—

Ellis Ross: As a seller, you can't know everything about a boat, even if you owned it for years. Electrolysis in aluminum, for example, is very hard to pick out, but you can tell how long it's been around, so even in that case...

Let's say you sell a wooden boat. You can't tell that the keel is spongy because you have such thick marine paint over it. You can't tell. That doesn't come back after a year when they find out that this sponginess occurred over the course of maybe two years prior. That doesn't come back to the seller.

Colin Henein: The requirement is to disclose that information about the vessel. That could only be with the information—

Ellis Ross: I understand that.

Colin Henein: —that the seller has and knows.

Ellis Ross: I'm talking about something that you couldn't determine at the time.

Colin Henein: That's right.

Ellis Ross: Even a marine survey misses this stuff. If in all honesty and with good intentions I thought I was selling a good wooden boat but couldn't tell you whether or not the keel was spongy because the paint was so thick, in the investigation into a disposal, if it turns out that this was the case and it was there before the sale

was made, does any of that liability go back to me as a seller even though I did everything I could and I wasn't aware of it?

Colin Henein: The requirement is to disclose information about the condition of the vessel. The department would provide some guidance on what the best practice is for disclosing that information on the part of the seller and the buyer, but that is what is reasonable that the seller knows to convey. If the seller doesn't know something, then obviously they wouldn't share the information that they don't know, but they would share the information relating to the condition of the vessel that they do have.

Ellis Ross: Okay, but that goes back to the original point. At the point of sale, given all these conditions that have been fulfilled, the seller has no more liability. It's already agreed upon on those signatures.

Colin Henein: That's right. It's a condition of the transfer of the vessel. It's not a provision that relates to liability of the owner. It's a provision that says you can't transfer a vessel from me to you unless we've done this exchange of information procedure.

Ellis Ross: Unknowingly—

Colin Henein: It does not address the situation down the road where the vessel sinks. The new owner is still responsible for that when it comes to the Wrecked, Abandoned or Hazardous Vessels Act.

Ellis Ross: The new owner is still responsible.

Colin Henein: Yes.

Ellis Ross: Okay. That answers a lot of my questions, actually.

To follow up on one of the first points, I understand what “resources” means in order to maintain a boat. I know what that means. Apart from money, will there be a checklist from Environment Canada showing the resources that are needed to maintain a boat, or will that be entirely up to the seller to talk about, depending on whether I'm selling an aluminum boat, a steel boat, a fibreglass boat or a wooden boat?

Will that be entirely up to me to talk about the resources? The resources are different depending on which materials you're using.

Colin Henein: The approach is really to set standards in the marketplace to make sure that there are informed decisions taken on the part of the buyer and that the seller has made some validation. It's not to have the department and the government involved in every transaction.

In terms of getting into advising buyers on boat ownership, that's something that can always be looked at in terms of providing general education and best practices as we start to inform people about what their obligations are under this amendment. However, I think it is ultimately incumbent on the parties to the transaction to inform themselves and be aware of what it takes to buy a boat and maintain it.

Ellis Ross: And to sell a boat.

Colin Henein: Indeed.

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

Mr. Bexte, do you still want to speak?

Ellis Ross: Thank you, Madam Chair.

• (1635)

David Bexte (Bow River, CPC): I have so many questions.

The Chair: Lovely. Go ahead.

David Bexte: Thank you, Madam Chair.

Truthfully, most of my questions are because I'm a terrestrial MP. I know nothing about marine life and nothing about boats. Listening to this exchange and this discussion, the comparisons to automobile sales, for example, are extraordinary in how differently these transactions are treated. They're just night and day. They're completely different.

What strikes me the most about this is.... I understand the intent. If, in general, the intent of the private member's bill is to reduce the number of derelict vessels, reduce the consequences of bad things happening, reduce the number of wrecks and reduce the number of disingenuous transactions, I'm really not sure that this does that because it's just inviting pencil-whipped transactions.

From what this looks like, if a seller can say, hand on heart, they trusted that the buyer had the resources, that's good enough, even if that transaction and that attestation by the buyer are written in pencil on a napkin. If he believes it, that's good enough. The truth or the veracity of it doesn't matter, and there's no verification and no standard. There's nothing at all embodied by this legislation to protect either party—the seller or the buyer.

Does that strike you as being possible in this?

Colin Henein: As we understand the intent of the government's amendment, it is to create a moment whereby the seller has to really tell the buyer what the status of this vessel is, and the buyer really has to make a choice about signing off on their ability to do it. It's in the creation of that moment that the bill has its effect.

David Bexte: I'm looking at this more from the perspective of the seller's dispensing of their liability. How do they trust that this transaction is done? It looks to me like there is no veracity in that at all. The attestation can literally be, "Yes, I believe it." They attest to the judge that they believed at the time the buyer had the resources to do this. It doesn't matter what the truth of the matter was at the time. As long as the seller, in their own mind, is reconciled that they really want to sell this boat, that they really have to get rid of this boat, that this boat has to go away and be no longer part of their life.... It's, yes, I trust this guy because I want to trust him. He signed a napkin with pencil, so that's good enough.

Can you see how that is a possible circumstance that's going to happen on a dock or a coast somewhere in Canada?

Colin Henein: I'm hearing your concern.

Madam Chair, I'm trying to get to the question so that I can provide a response.

David Bexte: Do you see the possibility that this gets treated, in practice, with a lack of the seriousness it deserves without some verification process, some trust process or some very definitive "this is clear and done" process? It's not prescriptive—I get it—and

that's normally a good thing, but at some point, some prescription is required.

With automobile transfers, the bill of sale and the attestation that the buyer has insurance.... That's what the seller needs to attest that, yes, there's capacity, they can complete this transaction, they can cash the cheques and they're done. The seller then trusts that they're done. They're not going to be burdened with liability down the road, hidden defects and all, which asks another question.

Following up on MP Ellis Ross's question, how are hidden defects treated in law? How thorough do you have to be in your assessment? What is the test at the bench?

Colin Henein: It's difficult for me to answer that question because, inherently, it's about how the bill would be interpreted in the future. The text of the amendment provides these two steps that have to be taken by the seller to satisfy themselves. That's the text I have in front of me to explain to you today.

David Bexte: Can you understand how, from my perspective, not having any experience with that part of Canadian life at all, I might approach this with some cynicism?

What does "satisfaction" mean? Yes, I'm satisfied. I really want to—

• (1640)

Colin Henein: I understand your question.

David Bexte: Thank you. I'm trying to sell a boat here, so I'm satisfied.

Some hon. members: Oh, oh!

David Bexte: I have a boat to sell. It's not a bridge. It's a boat, and I'd like to sell it to you.

Will Greaves (Victoria, Lib.): Madam Chair, on a point of order, I'm just wondering if Mr. Bexte's question essentially is that sometimes people lie and people may not operate in good faith. If so, that's really not a question that the officials are able to address satisfactorily. If people lie, there are criminal and civil mechanisms to hold them accountable for that after the fact. That's not really pertinent to the substance of our discussion today, sir.

The Chair: Thank you, Mr. Greaves, for your point, but I don't believe that's technically a point of order.

David Bexte: For clarity, if you'd like to discuss that, I'm more than happy to.

No, I'm not saying that people lie. I'm saying that people make mistakes and people are motivated by different things—

Will Greaves: They lie too.

David Bexte: Well, they do lie, but that's not what I'm saying. If we want to get into people and fraud and all the things that can come into this...

The Chair: Mr. Bexte, do you have further questions for the officials?

David Bexte: I think I've expressed my views well.

Thank you very much, Madam Chair.

The Chair: Thank you very much.

We'll now move to Mr. Fanjoy.

Bruce Fanjoy (Carleton, Lib.): Thank you.

I want to ask the officials what sort of documentation is required currently for the transfer of ownership of a vessel.

Colin Henein: I'm going to pass this question on to my colleague Sean Rogers, who is joining us online and is responsible for matters pertaining to the vessel registry and the pleasure craft licensing system.

The Chair: Go ahead, Mr. Rogers.

Sean Rogers (Executive Director, Legislative, Regulatory and International Affairs, Department of Transport): Thank you.

In the case of the pleasure craft licensing database, normally a bill of sale is required in order to first register a vessel upon its purchase when it's new or when the transfer of ownership is occurring. If there's a situation where the individual does not have a bill of sale, they can provide what's called a notarized statutory declaration. There is a sample form available on Transport Canada's website. That often happens during times of estate sales or at the death of an owner.

Bruce Fanjoy: I presume the usual legal requirements of people acting in good faith would apply. No fraudulent declarations could be made in this paperwork. Otherwise, whoever was responsible for those fraudulent declarations would face legal consequences. Those wouldn't fall on the seller as long as the seller acted in good faith and checked the requirements of the law. Is that accurate?

Sean Rogers: Yes, that's accurate.

Bruce Fanjoy: Thank you.

The Chair: Thank you, Mr. Fanjoy.

Mr. Arnold is next.

Mel Arnold: Thank you, Madam Chair.

I would like to get a short and simple answer from the officials. Is proposed paragraph 34.1(1)(b) requiring a written confirmation from a person as simple as a signed piece of paper simply stating that the person has the resources, etc.?

Colin Henein: If the seller is satisfied, that would satisfy the requirements of this section.

Mel Arnold: That's it. Then the seller is done, with just simply a piece of paper from the purchaser saying that they have the resources and the intent to maintain, operate and dispose of the vessel.

Colin Henein: It is up to the seller to satisfy themselves. As long as the confirmation comes in writing, the seller can satisfy themselves.

Mel Arnold: Could you explain what would happen and who would be deemed liable if the seller missed, through no intentional act, some defect that the buyer is not able to deal with, and thus the vessel becomes a derelict or abandoned vessel?

• (1645)

Colin Henein: As far as the bill is concerned, the obligation is simply to disclose information relating to the condition of the vessel in writing to inform the sale. It's really between the parties to the transaction to satisfy themselves.

Mel Arnold: You're not answering the question.

Colin Henein: I'm sorry.

Mel Arnold: Through no intentional act, the seller misses identifying a defect in the vessel that the buyer is not able to deal with, and thus the vessel becomes abandoned or causes an environmental issue.

Colin Henein: Right. There's an expectation that the seller will use due diligence in applying the Wrecked, Abandoned or Hazardous Vessels Act in general, so that's relevant. Ultimately, this provision regulates the transfer of the vessel, not the later liability. The new owner remains liable for the vessel once they receive it.

It's about the transfer of the vessel. That becomes a matter really between the buyer and the seller.

Do you want to add anything to that, Joanne?

Joanne Weiss Reid: Yes. If I understand your question correctly, if it becomes a hazard following the purchase of the vessel, the provisions under the act that are with the Coast Guard or Transport Canada regarding hazardous vessels and dilapidated, sunken or abandoned vessels would apply to the new owner.

Mel Arnold: Okay. They would apply to the new owner.

If that new owner doesn't have the resources to maintain the vessel and ends up bankrupt, what is the recourse then? Mr. Weiler, who is the sponsor of this bill, and I sit on the Standing Committee on Fisheries and Oceans, and we have done studies on derelict and abandoned vessels. We have done reports. The enforcement becomes a three-way hot potato between Transport Canada, Environment Canada and.... I don't even remember the third. It's the Coast Guard. It becomes a hot potato. The Coast Guard can't do anything until there's an actual spill. Nav Canada can't do anything unless it's actually a hazard to navigation, and Environment Canada can't step in until there's an environmental spill.

Should something happen whereby that new owner becomes unable to care for the vessel and maintain it, who is responsible?

Joanne Weiss Reid: I'll pass over to my colleague at the Coast Guard in the case of a hazardous vessel, and then if there are more questions about whether it's a dilapidated, sunken or abandoned vessel, I can speak to that.

Josée-Annie Verville (Director, Monitoring and Compliance, Canadian Coast Guard): Thank you, Madam Chair.

The Canadian Coast Guard is the single point of contact for the public if there is a spill or if the vessel becomes a hazard or abandoned. The Canadian Coast Guard receives information from the public about the incident or the issue that is happening, and then we will do an assessment of whether there is an owner and whether it is a hazard. If it is not a hazard, we will transfer the file to our colleagues at Transport Canada who are in charge of dilapidated and abandoned vessels. If it is a hazard, we have a similar approach from an enforcement point of view. We will inform the new buyer—it's actually the buyer who's liable—about their responsibility to maintain. They need to take care of the hazards their vessel is creating. We will then do a notice of assessment and educate them on their legal obligations.

We can also issue a direction if the owner is not acting upon what we are telling them to do. There is also enforcement. We have administrative monetary penalties that we can use, or we can recommend laying charges in court.

If the vessel is abandoned, I will transfer the file to my colleagues at Transport Canada. What happens?

Joanne Weiss Reid: It's the same. If it's abandoned and we don't have an owner.... In the case that you're speaking of, we have an owner who can't take care of their vessel, so, again, we would apply the same graduated approach to enforcement. In the case where we order them to take action and they're unable, we would take action and cost-recover as appropriate.

• (1650)

Mel Arnold: Thank you.

I want to go back to the responsibilities of the seller to obtain information from the buyer. There were a lot of questions about how long that liability exists, how long they keep the records and so on.

As a visiting member, I can't move an amendment, but I would like to suggest a friendly amendment to this bill. I would add "at time of transfer" to proposed subsection 34.1(1) and to its paragraph (b):

34.1(1) It is prohibited for an owner of a vessel to transfer ownership of it to a person unless the owner has taken the following steps to satisfy themselves that the person has, at time of transfer, the resources and intent to maintain, operate and dispose of the vessel

The Chair: I'm sorry, Mr. Arnold. Is the piece that you're trying to add in amendment G-2?

Mel Arnold: Yes.

The Chair: Okay.

Mel Arnold: It would be an insertion into the fourth line of proposed subsection 34.1(1). After "has taken the following steps to satisfy themselves that the person has", it would insert the words "at time of transfer," and continue with "the resources and intent to maintain, operate and dispose".

Also, in proposed paragraph 34.1(1)(b), it would say, "they have obtained from the person, in writing, confirmation that the person has the resources, at time of transfer, and intent to maintain, operate and dispose".

The Chair: You would need an ENVI member to propose what is, I think, a subamendment. We need to have it in writing to do so, to the best of my knowledge.

Mr. Leslie.

Branden Leslie: I could or I will happily move that on Mr. Arnold's behalf. We can circulate that in writing—it's five words and meant to be friendly—in the background while I ask a couple more questions, if that works. I believe I was next on the speakers list. He's not actually moving it. Until I do, in the meantime, we could send it in writing.

The Chair: You're not—

Branden Leslie: I said I "would" move it.

The Chair: You will move it later.

Do you want to continue with questions, or is it available in writing now?

Branden Leslie: It will be in minutes.

The Chair: It would also have to be translated into French. We'll need to actually review it, because there might be consequences to those words being added from a legal perspective. We'll have to actually contemplate that.

Branden Leslie: Sure. I'll buy time and ask some follow-up questions, if that's okay. Am I next on the list?

The Chair: You are next on the list, Mr. Leslie.

Branden Leslie: Thank you, Madam Chair.

By the way, and this has been mentioned a couple of times, there's been language saying that this is the suggested amendment from the government. You've said you're here explaining what this is. You're with Transport, I believe. Where within the government did this amendment come from?

From the way you spoke to it, Mr. Henein, it seemed you didn't draft it yourself, not just the legal text but the idea behind it. Where did this particular amendment come from?

Colin Henein: The process we follow within the government is that we are asked for information. We provide advice and responses to questions that are raised for us. In this case, a number of questions were raised. There were requests for us to provide text in certain cases.

Ultimately, we provide the advice to the government on what its position should be here in the meeting. Then it's up to the government to take the decision on what it would like to do with that advice and with respect to the text. We have seen the text of this. We have been involved in discussions around preparing the text, but it remains a government proposal at this time in the legislative context.

• (1655)

Branden Leslie: Okay.

I'll go back to the first amendment, "For greater certainty". I'd like to understand. Did Transport Canada not develop this amendment?

Colin Henein: There is a drafting process that involves the Department of Justice in these cases, which produces text that is provided as advice to the government and for it to take a decision on in the legislative context.

I hope I'm getting the details of this right.

Branden Leslie: I heard a response a while ago now...and I appreciate that you've been bombarded with questions, and I thank you for answering to the best of your ability in trying to defend this.

The parliamentary secretary outlined what this amendment was originally trying to fix. Could you confirm for me what this amendment that the government is proposing is trying to fix in the bill?

Colin Henein: There were a number of issues that the member spoke to at the beginning related to maintaining the original intent of the bill, requiring the removal of the assessment of the buyer's ability and introducing a clear approach around the disclosure of conditions and written confirmation, as well as limiting the size of the vessels that would be captured. That is the purpose of the government's amendment to the private member's bill.

Branden Leslie: Recognizing that the Department of Justice might have drafted....

The word "clear" keeps getting thrown around here. I just have no idea how this is clear. I fail to understand how this makes it more understandable for the average seller or buyer so they fully understand their obligations. Could you explain to me how this is clearer than the original bill?

Colin Henein: The purpose of the amendment is to ensure that it's clear how the owner is expected to satisfy themselves as to the resources and intent of the buyer to maintain and dispose of the vessel in a manner that prevents it from becoming a wreck or a hazard or from being abandoned. It lays out paragraphs (a) and (b), which are the two tests. Perhaps I shouldn't describe them as tests. They are the steps that need to be taken in the process of the owner satisfying themselves. In the private member's bill, those steps did not appear; therefore, it was up to the knowledge of the owner.

Branden Leslie: Yes, but "clear as mud" is the best way I'd look at this. If I wanted to sell somebody a boat and they handed me a piece of paper that said, "I have money," I could be satisfied with that. It's still very unclear.

I think of another situation. Let's say that a person with a vessel dies and that family members are trying to sell the boat. They're really out of their element. Are they potentially at risk of penalty for not doing their correct due diligence or not asking the right questions of what resources? What happens to them down the road? Maybe it's a warning for them.

I'm just curious about how that plays out for those who are suffering a loss in the family and are then just trying to get rid of a boat.

Colin Henein: Can you just...? I may have missed part of the question in there.

Branden Leslie: Let's say that my parents.... Let's say that an individual's parents—I don't want to jinx anything—pass away, and those parents owned a boat. The son or daughter has no idea of anything about boats. One, how would they know this is their legal

obligation? Two, how would they know what is going to fulfill their legal obligation as the seller of that boat as part of an estate sale or directly, or however they're going to go about it?

Colin Henein: Once the bill becomes law, the department would take it back and develop the implementation approach. We would provide an educational capacity out there for boat owners so that they would understand their obligations under the act, and we would provide them with some guidance in complying with it.

● (1700)

Branden Leslie: There's no record of transaction, and this is the whole problem—isn't it? Boats are being bought and sold all the time, and they're being left. It's admirable that this is a problem we're attempting to fix here, but it seems to me that it would be very difficult for Transport Canada to adequately reach a lot of individuals who are technically boat owners.

I'll go back to my colleague Mel Arnold's amendment that would have mandated, more or less, that Transport Canada be aware of all of these transactions. As I outlined to the parliamentary secretary, I think that probably would have been a much preferred solution so as to alleviate a lot of these problems. Is that a fair assessment?

Colin Henein: I'm not sure I can speak to the fairness of the assessment. I understand the point that's being made.

Branden Leslie: The government, I assume, in certain circumstances, sells surplus goods. What would the government feel its obligation is as the seller of a surplus vessel that would fall under this amended act? Let's say it's selling it to somebody through GC-Surplus or whatever other mechanism. What's its checklist?

What would the government feel is its legal obligation as the seller of a vessel that would fit this criteria? What would it do?

Colin Henein: If the bill became law, we would have to develop an approach that we would use within the government to convey the condition of the vessel and to satisfy ourselves of the declaration of the owner.

Branden Leslie: Would that level be the standard for everybody else?

Colin Henein: It's up to the seller to satisfy themselves. I would certainly provide—

Branden Leslie: I'm living in the real world. The government's going to make this long checklist. It seems like a reasonable question. Does the next person selling a boat have to follow the government's checklist when that situation plays out?

Colin Henein: The government would provide guidance on how to meet the obligations of that if it became law.

Branden Leslie: How are they going to...? Do I call 1-800-O-Canada and ask, "What's my guidance on selling this?"

Living in reality—

Colin Henein: There could be a number of different mechanisms to do it. Whether or not it's a phone call, I'm not sure. We could put something on the website. There are various ways we have to.... I don't want to be flippant about it.

The point is that we would take—

Branden Leslie: How about living in reality? This is a difficult thing to expect individuals to actually operate on.

Colin Henein: The government and the department would have to approach the problem of how to educate people about their obligations and provide them with the information they need.

Branden Leslie: Would the passage of this bill, given those extra demands on awareness, cost the government money?

Colin Henein: The intention here is to set a standard in the marketplace and not to involve the department in every transfer of a vessel from a seller to a buyer. We would follow our usual mechanism for implementing the Wrecked, Abandoned or Hazardous Vessels Act.

Branden Leslie: Thank you.

The Chair: Would you like me to suspend now so that we can review the subamendment? It's been sent now.

We'll suspend briefly and review it. Thank you.

• (1700) _____ (Pause) _____

• (1725)

The Chair: We will resume. Thank you very much, members.

Everyone received the proposed subamendment in both official languages. Are we ready to vote on the subamendment?

Wade Grant: Someone has to move it.

The Chair: Yes. Thank you, Mr. Grant.

Mr. Leslie, go ahead.

Branden Leslie: Thank you, Madam Chair.

I would like to move the subamendment that was circulated via email a few minutes ago.

The Chair: Thank you very much.

(Subamendment agreed to)

The Chair: Do you have your hand up to speak, Mr. Arnold?

Mel Arnold: Briefly, I'd like to ask the sponsor of the bill, MP Weiler, what the original intent of the bill was. Was it simply to better track vessel transfers in order to better manage the liability of abandoned and derelict vessels?

Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you for the question, MP Arnold.

Yes, it's about tracking the ownership of the vessels. A number of changes have been made recently, including the modernization of the pleasure craft licensing system, but it particularly addresses the issue of these bad-faith transfers, where you have someone transferring a boat, usually for a nominal fee, to someone they know doesn't have the ability to maintain it. Yes, it's making sure the owner is responsible for it and being able to track who that individ-

ual is, but it's also to address this issue of the transfers. That's what the measures are meant to do in addition to the amendment that's being discussed right now.

Mel Arnold: Thank you.

Now I'll turn to MP Grant, whose amendment we're dealing with here.

How would this amendment affect sales through auctions, whether they be private, public or government auctions? Who's responsible for the tracking of information in the case of an auction, when there often is no direct contact between the seller and the buyer?

• (1730)

Wade Grant: I'll turn to the officials.

Colin Henein: Thank you.

This is a very specific circumstance that's being asked about. The text of the bill regulates the owner of the vessel, and the owner is not allowed to transfer the ownership unless this is the case. It would be up to the parties involved in the auction to ensure that these provisions were accounted for within the overall system that the auction is being run under. It doesn't prescribe how it needs to be done in the auction, but it sets transfer requirements that would need to be met regardless of the type of sale.

Mel Arnold: In the case of a private auction, I can see where it would perhaps be reasonable for the auction company to require a statement from the seller of the vessel as to its condition, but when you have an online auction with multiple buyers bidding, how would you expect the auction company, to which the payment is made after the auction is completed, to verify that the buyer meets these conditions?

Colin Henein: The requirements of the act wouldn't change in this scenario. They would need to be met through the auction rules or through a mechanism like that, and it's the responsibility of the seller to ensure that happens.

Mel Arnold: I'm going to ask a good friend back home who's been an auctioneer all his life what kind of an impact this would have on auction companies that are considering selling vessels. I would guess that his response would be that they wouldn't want any part of it if it included this paperwork bureaucratic nightmare, which could add to the complication of abandoned vessels.

Unless there's something more specific or simplified that you can provide or that this bill could provide to deal with the transfer of vessels through auctions, I can't support where this would go.

The Chair: Thank you, Mr. Arnold.

Mr. Ross, did you have a question?

Ellis Ross: Yes. Thank you, Madam Chair.

I want to summarize what I heard from the the staff. I want to ask the sponsor of the bill about this, as well as the mover of this amendment we're talking about here. I want to be able to put this into words that I can describe to my constituents, while providing them the bill itself. I want to try to describe what I've heard.

From what I understand—and please give me some rope here—the seller has to take steps to satisfy themselves, as the seller, that the buyer has the resources and the intent to own the boat responsibly. I'm not talking about the legal text here. Basically, what you're talking about is the vessel condition disclosure, but it does not have to be verified. It's just basically the seller's opinion on the condition of the boat.

The buyer confirms that the buyer has the resources and the intent to own responsibly. Once this is agreed upon and it is recognized in writing, is in a written form, and the transfer takes place, the new owner has the responsibility and liability for this boat.

I really don't want to put words in Mr. Henein's mouth or anything, but is that more or less correct in terms of what we're talking about here today?

Patrick Weiler: If I may, Chair, the amendment as written shows that in order to satisfy, it's prohibited to transfer ownership “unless the owner has taken the following steps to satisfy themselves”, which includes disclosing “the condition of the vessel” and then obtaining from the person they're selling the vessel to that they confirm they have “the resources and intent to maintain, operate and dispose” of it.

There's a requirement for the seller to properly describe it and a requirement for the buyer to affirm they have this intent. Of course, it's not possible for the seller to have absolute certainty that they do, but it's a matter of taking these steps in order to satisfy themselves of that.

There are already measures in place to transfer the boat. There's a bill of sale. You also need to include things like having your identification. You need to have a picture of a boat. In my view, there would be ways in which you could add these provisions here to the existing processes already in place. I think it would be very difficult to fully prescribe all of the details of what that could look like, but should this pass, there would be the opportunity for Transport Canada to incorporate that in the existing processes and provide the necessary details so that those future boat transfers would be able to follow them.

• (1735)

Ellis Ross: Thank you for that.

What I'm getting at is that there's a certain point in time, given the measures that we've talked about here, when the liability and the responsibility for this vessel is no longer incumbent upon the seller. That is after the seller confirms that the buyer has the resources and intent to own the boat, and the buyer, in return, says, in writing, “I have the resources and intent.”

At that point, when that's all done and the transfer is actually completed, the seller has nothing to worry about. After a year, if the boat sinks, nothing will come back to the seller. That's kind of what I thought I heard here today. Is that the opinion of the...?

Patrick Weiler: My opinion would be that, at that point, it would be the responsibility and liability of the owner of the boat at that time. The seller would have discharged their obligations under the act. It's now under the ownership of the buyer, and they would have to comply with all the laws and regulations, including the Wrecked, Abandoned or Hazardous Vessels Act.

Ellis Ross: Like I said, I don't want to put words in the mouths of the officials, but I really want to talk about the liability and the responsibility for what we're talking about here today.

There seems to be a certain point in time when the liability and responsibility of that are actually transferred. Given the steps we're talking about, they're transferred to the buyer. No matter what happens next—it could be the next day or a year or two from now—they're not going to come back to the seller. Am I correct on that?

Colin Henein: Yes. What is being regulated here is the transfer of ownership, not the long-term liability for the vessel after the fact. Before the ownership is transferred, this exchange of information has to occur, and then the transfer of ownership continues. There's now a new owner, and WAHVA regulates the owner of the vessel, which, from that point forward, would be the buyer.

Ellis Ross: Being the seller, it's really up to me to convey what I think the condition of the boat is. It won't be verified by any third party. It's just my opinion. If the buyer agrees with that and I agree with the buyer's assertion of their competence or resources to maintain a boat, and it's signed, you have two documents and then the transfer happens. That's enough for the seller to discharge their duty in terms of liability or responsibility.

Colin Henein: That's correct.

Ellis Ross: Thank you.

Thank you, Madam Chair.

Branden Leslie: I have one more question. I'm sorry.

On that last point, unless the boat sinks or something happens, my obligation is completed as the seller. That is unless something goes wrong, and then the investigation starts and finds out what that still difficult to understand position of what my acceptable level of necessary steps was. Is that correct?

The obligation isn't actually fully exercised at that point, because something could still go wrong. In that case, looking backwards, the question becomes, “Did you take the steps necessary at that time?” It's not fully exercised at that point. I don't think that's a fair assessment. Is that correct?

• (1740)

Colin Henein: From what I understand, the distinction between your two questions has to do with whether we're talking about the steps that have to be taken to transfer the vessel or the liability associated with the vessel later becoming abandoned or derelict.

The liability for the abandoned vessel—it becomes a wreck or it starts leaking, or whatever the situation is that emerges later—is with the owner. In this case, that is the buyer. The responsibility of the seller is to disclose the condition and receive confirmation of the ability and resources of the buyer. The regulation of the transfer of the vessel is this exchange of information. The later liability for keeping the vessel in good condition as required by the act belongs to the buyer.

Branden Leslie: I think we should move on.

Thank you.

The Chair: All right.

Are we ready to vote on G-2 as amended?

(Amendment as amended agreed to)

(Clause 3 as amended agreed to)

The Chair: Moving to clause 4, CPC-1 was defeated, so CPC-2 cannot be moved due to incoherence. We will move to a vote.

(Clause 4 agreed to)

The Chair: We're moving to new clause 5.

Did the member want to move amendment G-3?

Wade Grant: Yes. I move that Bill C-244 be amended by adding after line 10 on page 2 the following:

5 Paragraph 130(1)(r) of the Act is replaced by the following:

(r) establishing conditions governing the sale, acquisition or other transfer of ownership of vessels, including measures that must be taken before a vessel is sold or acquired or a vessel's ownership is otherwise transferred;

The Chair: Thank you, Mr. Grant.

Are we ready to vote on G-3?

Branden Leslie: What are the other transfers? The last words are “other transfers”.

Wade Grant: It says “otherwise transferred”.

Branden Leslie: I'm sorry. I meant where it says, “other transfer of ownership of vessels”. It says “acquisition or other transfer”. Is that like I'm giving it to my child? What is the transfer? Is it a gift?

The Chair: Is there an official who can answer that question on what “other transfer” might entail?

Colin Henein: This amendment or addition to the text of the existing regulatory authorization in paragraph (r) is really about linking to the wording of “transfer” that's present in clause 3. Prior to this amendment, there was an existing regulation-making provision for the minister to establish conditions for sale or acquisition. The intention here is to clarify that it could be any kind of transfer. It doesn't have to be a sale. It doesn't have to be an acquisition. It's more for completeness than it is because there's a specific set of circumstances that has been envisioned.

If we did not have this provision but at some point it was interpreted that a transfer occurred that was somehow not a sale or an acquisition, then it would be subject to the act but not to the regulations. It's really about harmonizing the concept of transfer and making sure that there's no light between the statute and the regulations should this regulatory authority be exercised.

● (1745)

The Chair: Shall G-3 carry?

(Amendment agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you.

Given that it is 5:45 and we are out of resources, we will adjourn.

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