



CANADA

House of Commons Debates

THE HONOURABLE JOE VOLPE, P.C., M.P.
THIRD READING SPEECH ON BILL C-7:
AN ACT TO AMEND THE MARINE LIABILITY ACT
WEDNESDAY, MAY 13, 2009

Mr. Speaker, I am delighted to speak to Bill C-7. Before I begin, I would like to thank the parliamentary secretary because we are in the mode of thanking and because it is the right thing to do, acknowledging the fact that parliamentarians from both sides of the House and indeed from all four parties worked collaboratively on putting forth legislation that is in the public's interest.

The parliamentary secretary wanted to talk about four things and he touched on them very quickly. During the second reading debate, I addressed some issues that I thought needed to be looked at in some detail in order to bring forward legislation that would be commensurate with the betterment of the Canadian citizen's interest with respect to the Marine Liability Act.

Some of those issues were touched in committee. When I say “some of those were touched”, it is because when we bring issues to the committee, the committee brings forward stakeholders and other witnesses, interested parties, individuals and experts in the field in order to illuminate the issue, so that members of Parliament can penetrate on matters in a much more significant way than their own preparation might allow them to do. Putting partisanship aside, that is in fact what happened in this case.

Yes, as the parliamentary secretary said, we did want to bring forward legislation that brought Canada into the same standards of international practice with respect both to marine liabilities, the carriage of goods and services, but primarily goods, and to make penalties for contravention of the act, especially when it related to environmental damage up to a standard that would provide a real penalty.

We did look at these things, and this particular legislation does increase the penalty amount, for example, on commercial or public purpose vessels carrying passengers to a per capita limit of

about \$350,000 per passenger. We did not find much difficulty in that regard. We were more concerned about a series of other practices that are associated with, and may come as a result of, some of the activities that are conducted on a commercial basis.

To that end, we brought forward to the committee a variety of interested parties, including, for example, the Canadian Shipowners Association and International Ship-Owners Alliance of Canada.

Interestingly, they did not have a great deal to offer with respect to changes on a format that they thought only brought them forward to be competitive. I might say from a very personal point of view, I do not think that the punitive component of insurance and liabilities on the marine side was all that onerous for them, but it seemed to be consistent with the international practices that the rest of their competitors were operating under, and in fact did not diminish the protections that Canada, geographically, and Canadians on an individual human basis would suffer from.

We accepted their positions and it would appear that in many respects this legislation does make it easier for our own producers of services to compete in the international marketplace, but the committee was really looking at the issues of environmental degradation as a result of accidents in Canadian waters.

We noted, of course, that the Exxon Valdez, was probably the most serious of these shipwrecks that created untold damage that will carry on literally for decades, and cost enormous amounts of moneys, billions of dollars, in order to clean up and mitigate.

We did not address that sufficiently in my view. The changes that would have been required in order to get this bill through the House would probably have caused the bill to drag on and be delayed for an excessive period of time.

The committee made a decision that it would accept the limits that are proposed in the bill, such as they were, as sufficient movement forward in order to give all of those ship owners and carriers the opportunity to see that we are certainly much more serious than we were before because we have raised the limits, notwithstanding the fact that some might say that those limits are not enough.

We have delivered the message through this legislation so everyone understands that we want more due diligence. We want protocols put in place. The liabilities are going to be a lot more onerous than they have been in the past. Therefore, they need be able to up their insurance, or establish a care for the environment, a care for our shores, a care for our waters approach to doing business as they carry their products through our waters.

There was a series of amendments that did not come forward, but that reflected the interests that many Canadians from all parts of the country but in particular in our northern waters wanted us to address. They deal with not only the passage of vessels through their waters but the manufacturers of said vessels.

As we know and as we heard earlier on in the debate on environmental issues and protection of the environment, global warming is a fact of life that people are becoming more and more aware is not something that we are going to change overnight.

One of the effects of global warming is that the Northwest Passage, our northern waters, may become much more navigable not in the immediate future but in the future measured by the amount of time it takes to build some of these huge vessels, ocean-going carriers, as well as ice-breakers in order to allow countries like Chile, Russia, even the United States and other countries that see the advantage of going through our northern waters from a transportation point of view, in getting their goods to market.

Whether those markets be in Asia or in Europe, it would appear that our waters may provide all of those shippers with an opportunity to have a huge savings on the transportation cost side.

Some of the members from my own caucus brought forward some views at committee that addressed the issues of our aboriginal population in northern Canada and the protection of the environment in the northern parts of Canada.

Some of those views, while expressed at committee, have not found their way through amendments in this House, so I raise some of them today. I think some of my colleagues from the north, especially my colleague from Yukon, may take the opportunity to enumerate them as he addresses this issue at third reading. I look forward to hearing some of those expressions once again.

In addition to addressing the environmental impacts, which are not solely addressed by the insurance costs and the penalties that are going to be imposed through this legislation, in Canada and around the world, quite frankly, there is the issue of prevention, delivering the message that shippers need to use vessels that are seaworthy, crews that are appropriately prepared, trained and ready to utilize their vessels in a safe and efficient fashion as they go through our waters.

That is the essence of what this legislation aims to do. At least, from members of the Liberal caucus at committee, this is the focus of our issues on this legislation. The legislation, as we dealt with it at committee, did meet those concerns, and as a result we felt a certain level of comfort in supporting it, not just at second reading before it came to committee but at third reading as well, as we now find ourselves.

There is a series of other issues where we had concerns and we moved some amendments in this regard. I want to share them with you, Mr. Speaker, because I know that you are going to be interested in ensuring that members of Parliament do the work they need to do in committee to address the issues that Canadian citizens individually and collectively want to have addressed by their parliamentarians.

While the legislation addresses the issue of liability, insurance claims, appropriate funds at play and legislation to ensure that people abide by the contractual arrangements they have made as they operate in Canadian waters and on Canadian territory, it appeared to us in the Liberal caucus that we needed to reinforce at least two other measures. One of them is associated with non-compliance of contractual obligations and the practices of some of the shippers and the ship owners--sometimes they are not exactly the same individuals--and the liabilities they might or might not accept or forgo as they move in and out of Canadian waters.

When the member for Brampton West speaks to this later on, he will itemize the way the liens were dealt with in this legislation. It was our view that Canadians are put at a commercial disadvantage by the way that liens are treated in this legislation. I leave it for members to follow his discussion when he rises in the House in the not too distant future, probably before the end of today and if not today, then tomorrow. It will be most enlightening.

Let me point to the fact that the Canadian Bar Association, the national maritime law section, and the Canadian Maritime Law Association were impressed by the amendments the member brought forward and ones that he addressed on behalf of our caucus and parliamentarians with respect to the position that Canadian businesses would have relative to businesses originating in other places. Everything is very mobile on vessels on water and in Canadian ports. He focused, as we focused, on protecting Canadian business interests. His definitions and concerns were unfortunately not viewed with the same kind of appreciation by members of the government or the other opposition parties. However, they did accept that it was a view that was legitimate enough to be heard.

Interestingly, the Canadian Bar Association and Canadian Maritime Law Association felt that not only were the points made by my colleague from Brampton West absolutely apropos, and I hope they will accept this little jibe in a friendly fashion rather than in a negative malicious one, but in true lawyerly fashion they felt that it would not matter if they were not accepted because there were remedies in other courts. Canadian citizens are more interested in making sure that the law is much more specific rather than saying, "I can find remedies if I can get a lawyer who may be expert, who can find a judge and who will be prepared in his turn to hold the ship until I get my commercial interests addressed".

At any rate, Mr. Speaker, those amendments were debated hotly in our committee. I say this because I know that you are interested in knowing that committees do not just receive things and rubber-stamp them, but they actually do their work. Those amendments did not go forward unfortunately, so we found ourselves in a position where we either accepted the bill in its totality and what it was designed to do, i.e., to generate greater protection for the Canadian environment, greater protection for Canadian businesses and greater protection for Canadian citizens, either we were going to hold it up or start to move forward. We adopted an incremental approach, one that says we will bring our concerns forward, as we did in committee and as we will in the course of this debate, and at the same time accept the legislation for what it will be.

The second item that created some concern for us was the issue that I am sure other members will address but that the parliamentary secretary has already alluded to, and that is the issue of adventure tourism.

Representatives from Wilderness Tours as well as from the Tourism Industry Association of Canada talked in terms of the kinds of insurance that are not available to adventure tourism operators. In fact, adventure tourism operators find it impossible in some instances to get the appropriate insurance liabilities in place for them to operate. It is with some regret that I would say we have to accept what this bill is trying to do and what it concludes in doing, and that is, it eliminates their legal responsibility to their customers by essentially saying they no longer have to have insurance as long as they can get an informed consent and a waiver before a potential client engages in the activity.

There are some in this country who think that is okay because a consenting adult engaging in adventure tourism, which by its nature is highly risk-oriented, cannot really hold somebody else responsible if there is an accident or, God forbid, a death. The person's family or close ones would have no recourse to the courts for liabilities if the person had engaged in one of those activities.

Personally, I have a different view, but it is not the view that carried the day in committee. For me, it is an abrogation of a responsibility on the part of government to say that if someone agrees to take all of those risks, the operator will not be held responsible for anything. I realize that is a philosophical position and I am willing to accept that people have a different view, but I do not like it.

Where I think we have some serious challenges is in, at the same time, absolving operators who might operate without the appropriate preparation and training of their staff and without the appropriate publication of the risks associated with something other than adventure tourism, like whitewater rafting, et cetera, for passengers who are viewers or passive passengers in these kinds of activities, without any recourse at all. The operators would be entitled to be held safe harmless

from any future litigation provided they give an indication, they publicize an indication or they verbally tell people that people who engage in that activity are taking their body and their life in their own hands and they absolve the operators of all liabilities.

One of the most compelling of the witnesses, a local individual, indicated that over the course of the last 20-some years, his operation had paid, I believe it was, in excess of \$1.2 million in premiums to insurance companies and the insurance companies, over that entire period of operation, had paid out a grand total of \$70,000 in claims.

There are probably a few reasons for that. One of them is that the individual operates in a safe environment. The other is that there are not that many accidents. A third one is that once there is a signed public waiver, the cost to pursue a legal action in court would grow exponentially, and a lot of people would make the decision not to pursue their claim in court because it would cost more to pursue the claim than what the claim would eventually get them.

These are the kinds of anomalies in the legislation that, as I say, after we debated them, the committee decided that those concerns were not sufficiently grave to accept them as amendments. I am of a different view, but the legislation in its total deserves support. Again, some of these issues will be raised by some of my colleagues and I welcome their observations.