

A Conservative's Support for a Liberal Bill

The importance of disagreeing agreeably and how it leads to common ground

Submission to Transport Committee, House of Commons

John Weston, Lawyer and Former Member of Parliament
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Background Members and former colleagues, thank you for honouring me with the invitation to testify. I support the Government's Bill C-64. I also take the liberty of suggesting several suggestions for improvement.

By way of background, I served as Member of Parliament for West Vancouver - Sunshine Coast - Sea to Sky Country from 2008 through 2015. I now practise law and government relations, living in both West Vancouver and Ottawa. I published a book last year called *On! Achieving Excellence in Leadership* which reflects on noble aspirations of Members of Parliament, some of whom are at this table today.

An Uplifting Background Story Let me relate the story that brings me here. It's a story of multi-partisan cooperation, of people listening to political adversaries, of finding common ground, and of the political system gone *right*. In other words, it's a good story that could add a sense of nobility to the tarnished image of politicians.

As former MP, I introduced a Private Member's Bill with concepts now enshrined in Bill C-64 (*An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations*). My Bill was C-695 (*An Act to amend the Canada Shipping Act, 2001 (prohibition against abandonment of vessel)*). <https://openparliament.ca/debates/2015/6/17/john-weston-1/>, the result of four years of meetings and discussions in the coastal riding I represented. Besides the longest name of all ridings, the riding is also home to a disproportionate number of abandoned boats.

Problems Associated with Abandoned Vessels According to the Government's C-64 Backgrounder, there are currently hundreds of such vessels in Canadian coastal waters. Abandoned boats pose a serious challenge to Canada's coastal communities. Currently, the Coast Guard or Ministry of Transportation removes them, but only if they threaten navigation or pose an imminent risk of environmental damage. Otherwise, they sit, they drift, and they rot, causing environmental damage, endangering other craft on the waters, and blemishing the seascape in some of Canada's most beautiful places.

All of the problems targeted by C-64 were alive in my riding, and people were at their wits' end. Canada lacks several key things that could help: a centralized system for the identification of boat owners, punishment for people who abandon boats, and coherent intergovernmental cooperation. This intractable issue cuts across Federal, provincial, and local jurisdictions. Furthermore, abandoned vessels can be costly to remove. They also trigger worrisome types of legal and political liability.

The result? Hundreds of derelict boats sprinkled across eastern and western coastlines became navigational hazards, sources of pollution, and eyesores. In one case, highlighted by the *Squamish Chief* and *Global Canadian* newspapers, the same person abandoned four vessels off Squamish, B.C. Creative vandals painted an enormous phallus on the side of one of these vessels, a "Super Unwholesome" image to mar BC's "Super Natural" reputation.

How Awareness Grew in the Riding I Represented I first dealt with the problem in 2011, when Bowen Islander Bruce Russell began one of his famous crusades, this one to rid Bowen's Mannion Bay of a large and growing number of abandoned vessels. On a tour of the beach, I met Bowen's Manager of Parks and Environment Bonnie Brokenshire, a locally stationed RCMP Officer, local residents, and others. On a subsequent visit, my staff and I rented kayaks to paddle around the wrecks that bobbed in Mannion Bay. Between 2011 and 2015, I met several times with other coastal community leaders, the Transport and Fisheries Ministers, and government staff in charge of the removal of abandoned vessels. I also researched what other jurisdictions did to manage the problem.

By listening to concerned constituents, understanding what we were up against, and studying best practices, we finally came up with a plan: a Private Member's Bill. But what should

form the heart of the Bill that was simple enough to comply with the PMB requirements, yet significant enough to make a dramatic difference?

The answer came from an unlikely source: Dr. Eoin Finn, one of the most relentless critics of the Conservatives when we were in office. He and I were participating at the meeting of an environmental group, the Future of Howe Sound Society. During a break, while standing in the food line, Dr. Finn suggested an amendment to the law that would provide jail terms for people who abandoned boats. In other words, he was saying, make the offender personally responsible. Responsibility is a value in which I strongly believe, as highlighted in my book.

Personal Responsibility - Underlying Theme of the Response Personal responsibility became the underlying value in Bill C-695, which I brought to First Reading in the House in June 2015. C-695 would have made it an offence to abandon a boat, subjecting the offender to jail time up to a year and fines up to \$100,000. As far as I know, this was the first time in Canada that a bill was presented to impose jail time for abandoning vessels. I am pleased to see that C-64 embodies this key concept of personal accountability and in fact extends it, increasing potential incarceration up to three years and potential fines to \$4 million (section 110(7)) and requiring of certain vessel owners that they obtain insurance that will help cover the costs of vessel removal, when necessary. The key idea of imposing personal accountability is an underlying theme of the Government's Bill, evident in several places. Among many sections, Section 40 stands out, stating squarely that "The disposition is at the risk, cost and expense of the owner of the vessel, wreck or contents."

NDP Actions NDP Members also did valuable work to solve the abandoned vessels problem. In her Private Member's Bill C-638, an *Act to Amend the Canada Shipping Act, 2001 (Wrecks)* former NDP Member Jean Crowder (Nanaimo-Cowichan) proposed to single out the Coast Guard as the agency responsible for disposal of such boats. She was on the right track but her Bill would have created an unlimited liability for the taxpayer. It also suffered from a technical flaw in that she mistakenly sought to impose a legal duty on an agency, the Coast Guard, that was not a legal person. Ms. Crowder's Bill was echoed by Private Member's Bill C-219 tabled in this Parliamentary Session by her successor, NDP MP Sheila Malcolmson (Nanaimo-Ladysmith), a bill recently deemed "not votable" by this Committee.

For the reasons I've mentioned, Minister Raitt and Cabinet concluded they should oppose Ms. Crowder's Bill. I wanted Opposition members to support my initiative so felt it was only fair to support theirs. I was thus the sole Conservative to vote in favour of the Crowder Bill. I can report it feels very lonely to be the "odd man out" when you stand alone in Parliament against your Party!

My Liberal Opponent's Support for Bill C-695 During Campaign 2015, it would have been convenient for my Liberal opponent Pamela Goldsmith-Jones to take issue with my Bill or at least ignore it but she saw the need for a solution and graciously endorsed it.

These are all examples of the way in which natural political adversaries came together to respond to an obvious need. This rare consensus among adversaries paved the way for a broadly supported remedy. These interactions were warm-up rounds which prepared us for possible unanimity in support of C-64.

Conservative Support for Bill C-695 My Conservative friends should be particularly proud of this moment as they can rightly say the Liberals have been persuaded by good Conservative values and policies. Conservatives are clearly on the record in support of increasing personal responsibility for vessel maintenance. Late in Campaign 2015, the Conservative Party announced it would make C-695 part of its National Platform: <http://www.squamishchief.com/news/local-news/conservatives-float-plan-to-jail-owners-of-abandoned-boats-1.2079418>; <http://www.bowenlandundercurrent.com/news/conservative-party-throws-support-behind-abandoned-vessels-legislation-1.2081269>. Conservative Party members also voted at the Party's 2016 National Policy Convention to incorporate the principles of C-695 in the Party Platform.

Bill C-695 made it only through First Reading in the House, in June 2015. The House was dissolved soon thereafter for the October 2015 election. Like all other bills, C-695 died on the Order Paper. But it lives in key aspects of Bill C-64, which focuses on personal accountability as the heart of the solution to abandoned vessels.

Strengths of C-64 This brings us to C-64, the Bill before this Committee, which has several overriding virtues. As mentioned, it enshrines that great Conservative principle - personal

accountability. It deflects financial liability from the taxpayer to the person who commits the offence - more good Conservative philosophy! Deft legal drafting eliminates the technical problem in the previous NDP bills of trying to impose a legal responsibility on the Coast Guard, which is not a “legal person”. Section 110 of the Bill also imposes mandatory minimum sentences, another feature favoured by many Conservatives in criminal justice legislation.

Consolidating responsibility for abandoned vessels within one government agency also suggests good progress. However, as reflected in one of my recommendations below, the responsible Department should be Transport, not Fisheries, and for that matter, I believe the Coast Guard itself should be located in the Transport Department, where it was until 1995, not in Fisheries.

C-64 reflects the aspirations of a wide array of Canadians such as those who supported C-695. This Bill has the virtue of significant stakeholder commitment and broad, nonpartisan grassroots consideration. Alison Wood, Executive Director of a non-profit organization which originates in the riding I represented, has this to say in connection with your deliberations: “[Ocean Ambassadors Canada is] a not-for-profit organization devoted to connecting young people with the ocean, educating them about the problem of ocean plastics and empowering them to make real change. [We] heartily endorse a new law that decreases the amount of litter in our oceans, including abandoned boats.” (Jan 31, 2018 email). It’s a Liberal Bill which floats in part on interest generated by the NDP, and buoyed along by good Conservative principles!

Three Large-Scale Recommendations While I support C-64, it can be improved in many ways. Let me touch on three broad recommendations for improvement, then on suggestions that relate to specific sections of the Bill.

Firstly, it will be much easier to identify boat ownership if Canada consolidates and improves boat registry databases in order the better to identify owners. Those who acquire an interest in a vessel after a specified date ought to be required to register.

Secondly, in order to cultivate a user-pay approach to implement this Bill’s provisions, boat owners should be required to pay a fee when they register their vessels. I propose levying a small licensing fee for new boat owners that could go into a fund to be used to finance the removal of derelict vessels.

Thirdly, and most ambitiously, the Canadian Coast Guard used to reside within the Ministry of Transport. If you’re unsure about this, consider which Committee is reviewing C-64

as we speak today - your Committee - Transport, not Fisheries. Abandoned Vessels is more a Transport than a Fisheries issue and Coast Guard is more a transport arm of government than an aspect of Fisheries. In reading C-64, from the Definitions Section forward, you'll see that the Transport Minister keeps popping up, as he has the more natural jurisdiction. And when MP Crowder in 2015 introduced the first of the two relevant NDP Bills, it was then Transport Minister Lisa Raitt, not the Fisheries Minister, who responded on behalf of the Conservative Government. Coast Guard's mission and operations align better with Transport than with Fisheries. While a reorganization to achieve a more streamlined Coast Guard lies beyond the ambit of Bill C-64, I do recommend that such a change be considered.

Section by Section Recommendations Finally, let me touch on specific sections of the Bill that bear further scrutiny and potential change:

1. Definition section: "on federal property". Why not make the Bill applicable in certain circumstances even if the wreck is located other than on federal property?
2. Section 12 - not sure if the Act visits the intended consequences against corporate owners.
3. Section 15 - definition of "owner" is linked to the Treaty but needs to be tied into our registries, which I understand are numerous and inconsistent
4. Sections 32 (2) and (3) do not set out clearly enough what constitutes "abandonment" for a period less than 2 years.
5. Section 38 (2) (b) - need clearer explanation of notice if the owner is not identified (you can borrow parallel language from service of legal process in Canadian civil procedure).
6. Section 76 appears awkwardly to attempt to amend the law on evidence. I doubt this would withstand a court challenge.
7. Section 82 (11) - what about costs arising from groundless detention orders? 86(6) not sufficient!
8. Section 110 (2) - while under the *Canada Shipping Act* a vessel can commit an offence, why not for clarity instead name the owners or operators of a vessel?
9. I do not see explicit provisions in the Bill designed to ensure enforceability of Canadian judgements arising from C-64 in foreign courts.
10. Overall, the organization of provisions in the Bill could be improved.

Concerns about applying the international convention:

11. C-64 should state explicitly that, where there is a conflict between Canadian law and the convention, which law applies. It is not clear which would govern.¹

12. For full implementation, the Treaty needs supportive measures within provincial legislatures. Nothing in C-64 anticipates this explicitly.

13. Ensure insurance requirements are coordinated as between the Treaty and C-64.

Conclusion and Congratulations To close, I congratulate those on all sides of the House who have participated in bringing C-64 this far. Many factors have contributed to the thinking behind it - Conservative principles, NDP advocacy, and the entreaties of stakeholders

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“The field is somewhat muddied, however, by the Canadian jurisprudence on application of international law. International law scholars Jutta Brunnee and Stephen Toope argue that “there appears to be a trend towards treating all of international law, whether custom or treaty, binding on Canada or not, implemented or unimplemented, in the same manner – as relevant and perhaps persuasive, but not as determinative or, dare we say, obligatory.” [5] In other words, both types of international law – custom and treaty – seem to be “kind of, but not totally” applicable.” FN [5]: Jutta Brunnee and Stephen J Toope, “A Hesitant Embrace: The Application of International Law by Canadian Courts” Canadian Yearbook of International Law (Volume 40) (2002) at 5.

Azeezah Kanji, Applying International Law in Canadian Courts: A Pocket Guide for the Perplexed, Canadian Lawyers for International Human Rights <http://claihr.ca/2015/01/01/applying-international-law-in-canadian-courts-a-pocket-guide-for-the-perplexed/>

from coast to coast. The trail of C-64 is an unhappy road paved by people happily willing to listen to one another's viewpoints. Should the parties seize common ground, you will take pride in supporting C-64, as I do. Thank you for your service of our country and your kind attention today.



Announcement that Bill C-695 would become part of the Conservative Party's 2015 Election Platform, at Ambleside Beach in West Vancouver, B.C., Oct 5, 2015 (L to R: former Industry Minister James Moore; John Weston, former M.P. (West Vancouver - Sunshine Coast - Sea to Sky Country), Elaine Allan, Conservative Party Candidate of Record for Vancouver Centre, Kerry-Lynne Findlay, former Minister of National Revenue, and Stockwell Day, former Minister of Public Safety)