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# **Standing Committee on Transport, Infrastructure and Communities**

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**EVIDENCE**

**Tuesday, October 25, 2016**

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**Chair**

**The Honourable Judy A. Sgro**



## Standing Committee on Transport, Infrastructure and Communities

Tuesday, October 25, 2016

•(0850)

[English]

**The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)):** I call to order the meeting of the Standing Committee on Transport, Infrastructure and Communities.

Pursuant to Standing Order 108(2), this is a study of the Navigation Protection Act.

For witnesses today, we have David Marshall, executive director of the Fraser Basin Council. Welcome, Mr. Marshall, and thank you very much for coming. We look forward to your testimony about a very important act that we are looking at to see if it's good enough or if could we make it better. That's what the committee is looking at today and it's what the minister is looking at.

[Translation]

**Mr. Luc Berthold (Mégantic—L'Érable, CPC):** Madam Chair

[English]

**The Chair:** Yes, Mr. Berthold.

[Translation]

**Mr. Luc Berthold:** Madam Chair, at our last meeting, I gave notice of the following motion:

Whereas the minister of Transport has already decided the changes to be made to the Navigation Protection Act and following the hearing of the Canadian Energy Pipeline Association and the Canadian Construction Association.

I ask that the Committee suspend the study until the minister of Transport submits his own modifications to the Navigation Protection Act to this Committee.

Madam Chair, my hope is that the committee will discuss the motion this morning, before hearing from the witnesses.

[English]

**The Chair:** Mr. Berthold, as you know, our meeting is only an hour, rather than two hours, given the fact that there have been votes called. We only have a short hour with our guest, who has come a long way to give us testimony. I realized you would ask it, and we're obligated if you don't want to do otherwise, but would you consider delaying it until the next meeting?

[Translation]

**Mr. Luc Berthold:** I would rather do it this morning, Madam Chair.

[English]

**The Chair:** All right.

Are you speaking to the motion, Mr. Badawey?

**Mr. Vance Badawey (Niagara Centre, Lib.):** No, thank you, Madam Chair.

[Translation]

**Mr. Luc Berthold:** Madam Chair, if I may, I will speak to the motion, after which we can proceed with the vote.

I have asked the committee to vote on my motion. If the committee wishes to put the question on the motion right away and put an end to the work, I agree. Otherwise, I will speak to the motion and we can debate it.

[English]

**The Chair:** You just spoke to it, Mr. Berthold, and asked to vote on it. I concluded that you were complete on your comments.

[Translation]

**Mr. Luc Berthold:** No. I had not finished, Madam Chair.

[English]

**The Chair:** I'm going to ask for the clerk to verify.

**The Clerk of the Committee (Mr. Andrew Bartholomew Chaplin):** He's in fact moving it. You gave him the floor, presumably on a point of order.

**Mr. Luc Berthold:** Yes, not on the motion, but on a point of order.

**The Clerk:** Generally, you can't move a motion on a point of order. Once he's given the floor, he can.

**The Chair:** Mr. Badawey.

**Mr. Vance Badawey:** I'd like to move to adjourn debate please.

**The Chair:** We have before us a request from Mr. Berthold to vote on his motion, and we have Mr. Badawey who is wanting to speak to it.

**Mr. Vance Badawey:** Thank you. As I mentioned earlier, I am proposing that we put a motion forward to end debate. This is, quite frankly, a non-debatable motion, and I would like the chair to have it recognized.

**The Chair:** The motion is duly before us. Mr. Berthold moved it, as is his right. He gave us 48 hours' notice. I'm going to suggest, unless there's further discussion, that those who are in favour of Mr. Berthold's motion raise their hands.

The motion fails. It's disposed of.

(Motion negated)

[Translation]

**Mr. Luc Berthold:** Madam Chair, I think Mr. Badawey has also moved a motion to get back to the agenda.

[English]

You just put a motion.

**Mr. Vance Badawey:** I was trying to give you the benefit of the doubt, Luc.

**The Chair:** So are you withdrawing your...?

**Mr. Vance Badawey:** Well, it's too late. It's a redundant motion now. The motion has been dealt with.

I was trying to get the motion for discussion at the next meeting.

**The Chair:** All right. We will continue on with our meeting at this point, if everyone is ready to give Mr. Marshall the floor.

My apologies for the delay, Mr. Marshall.

Please, the floor is yours.

•(0855)

**Mr. David Marshall (Executive Director, Fraser Basin Council):** No problem.

Thanks very much, Chair Sgro and committee members, for the invitation to be with you this morning. It's an honour to appear before you and participate in a discussion on the Navigation Protection Act.

I am David Marshall, as introduced, the founding executive director of the Fraser Basin Council. It is a not-for-profit organization established in 1997, with a mandate to advance sustainability in the Fraser River basin and throughout British Columbia.

Earlier in my career as a young professional engineer, I was doing water quality work for the International Joint Commission on the St. Lawrence River. That was when I was first introduced to the then navigable waters protection act. I became more familiar with the act when I was involved with the Canadian environmental assessment process from 1978 to 1990. This act was one of the oldest in Canada, as you know, designed to ensure that Canada's commercial and recreational navigable waterways were protected from any works that might affect navigation.

The amendments that came into force in 2014 concentrated the application of the act on 162 of Canada's busiest commercial and recreational navigable waterways. There are good reasons in this review process to discuss the scope of the legislation and whether it should apply more broadly to navigable rivers, lakes, and waterways in Canada.

I am pleased to see this opportunity for public input, and will leave it to others to bring forward perspectives on this important issue. I would flag the importance of respecting aboriginal title and rights in this process in any proposed legislative changes.

My remarks today are focused on the Fraser River, one of the rivers on your inclusion list, and a pressing challenge ahead. The Fraser River is one of the 62 rivers included on the current schedule to the act. It is a critical waterway that supports busy commercial and

recreation-related navigation. The Fraser is nearly 1,400 kilometres long, from its headwaters high in the Rocky Mountains to its mouth at the Strait of Georgia. First nations communities have travelled and settled along this river for over 10,000 years, a testament to its enduring attributes.

Today the Fraser remains a living, working river, as well as being designated as one of Canada's heritage rivers. It supports globally significant Pacific salmon and sturgeon populations, B.C.'s aboriginal commercial and recreational fishery sectors, the transport of timber and forest products and other natural resources, as well as operations at the port of Vancouver, which connects Canada to its Pacific Rim trading partners. As noted in a 2014 report from the Richmond Chamber of Commerce, the port of Vancouver is the largest port in Canada, and largest port by export tonnage in North America. The port operations on the Fraser River rival those of the St. Lawrence Seaway, both in terms of tonnage and jobs.

Consider the entire Fraser River basin, which is the fifth-largest river basin in Canada, spanning an area of 238,000 square kilometres, comparable in size to the State of California. It is home to two out of three British Columbians, with over 50% of all British Columbians living in communities of the Lower Mainland and the lower Fraser River.

The threat to this region, which would include major impacts on navigation, and that I wish to draw to your attention today, is flood. B.C.'s Lower Mainland faces two major flood issues and threats: Fraser River spring freshet flooding, and coastal flooding during winter storm surges.

Nine years ago, in the spring of 2007, I remember being very concerned about regular news items on the quickly rising Fraser River. The snowpack that year was unusually high and there was significantly warm weather, a rapid snowmelt, and a forecast of rain. Everyone was concerned about the dikes being breached.

There was significant investment in urgent flood mitigation work to avoid suffering major economic and social consequences. Fortunately, we dodged a bullet, as the waters of this mighty river came within a metre of overtopping the dikes. That was truly a major wake-up call for all of us. A lesson to be learned is to plan well ahead and to invest wisely rather than reacting in the days and weeks prior to the rise, in the crisis.

Then came, as we all know, the huge Alberta floods in 2013. The province of Alberta has incurred huge economic losses, with uninsurable claims totalling over \$4 billion, and total losses of about \$6 billion.

•(0900)

In B.C.'s Lower Mainland, the threat of a major flood is significant. The region has been subject to major floods twice before in recorded history, in 1894 and 1948, when the population was small. Today, 300,000 people live in the Lower Mainland flood plain areas and there is extensive infrastructure at risk, much of which supports navigation on the river, that would impact the whole region, the province, and the country.

Over the past two years, the Fraser Basin Council has facilitated the first phase of a collaborative Lower Mainland flood management strategy. The process brings together 43 government and private sector funding partners, which is unprecedented, including the Government of Canada, the Province of British Columbia, and every single municipality in the region.

The phase one work was completed this past spring. I've brought you some reports of that work.

We know now there is a growing risk of flood in B.C.'s Lower Mainland, both in terms of flood frequency and size, because of sea level rise and other projected impacts of climate change. If a major Fraser River or coastal flood were to occur between now and the year 2100, it would trigger losses estimated at \$20 billion to \$30 billion, which could be the largest economic disaster in Canadian history. A greater level of protection is needed.

A recent assessment carried out in phase one by the provincial inspector of dikes showed that 71% of the assessed Lower Mainland dikes are vulnerable to failure from overtopping during a major Fraser River or coastal flood scenario. Only 4% of assessed dike segments meet current provincial standards for dike crest height, which includes 0.6 metres of freeboard above the water surface elevation of the design flood event.

We know the problem and the seriousness of the consequences. Now we are working on the solution.

Phase two of the strategy is now under way and will build options within a regional flood action plan by 2018, including a cost-sharing proposal. This work is possible only through the collaborative efforts of federal, provincial, local, and first nations governments, together with various private and non-government participants, including Port Metro Vancouver and the wharf operators association.

It is a process we believe is unique in Canada, because it has everyone at the table, working together proactively.

At the Fraser Basin Council, we have long worked in integrated flood management and we are honoured to facilitate and manage a process that will protect this vital transportation and navigation corridor.

The Government of Canada has been a partner in phase one of the work, and INAC informed us last week that it will continue to be a partner throughout phase two. Because we believe in full collaboration and proactive action, we encourage Transport Canada and other federal departments and agencies to have representation in this process to help inform the flood protection options to be explored.

We recognize that any proposals for changes in flood protection infrastructure will be subject to the Navigation Protection Act and must respect its intent.

Proactive leadership in working through issues will be invaluable to coming up with a solid flood action plan.

Thank you for your time, and I welcome your questions.

**The Chair:** Thank you very much, Mr. Marshall.

Mr. Berthold.

[*Translation*]

**Mr. Luc Berthold:** Thank you very much, Madam Chair.

This morning, I did not have an opportunity to speak to my motion asking that we suspend our work until the Minister of Transport submits his own amendments to the bill. That would make our work much more effective and functional, preventing us from spending taxpayers' money for no reason.

Mr. Marshall, thank you very much for agreeing to appear before the committee. It's very much to your credit.

It must be said that this is the second meeting for which we have tried to have witnesses and that they did not respond to our request. This demonstrates the lack of interest of organizations in appearing for this study, because they cannot find anything to say. There is absolutely nothing to say about the minister's expectations of the committee. There is nothing to say, because the amendments made in 2012 by the previous government suit the people who have to work with the Navigation Protection Act. I think meeting before finding out the intended amendments is a waste of time.

In the last session, I even had the opportunity to hear my colleagues opposite repeatedly say that the amendments were not written in advance, that the minister had no expectations and that the goal was to hear from the witnesses to find out what they had to say. Once again, that's not what the minister's mandate letter says. Instead, it says the following:

Work with the Minister of Fisheries, Oceans and the Canadian Coast Guard to review the previous government's changes to the *Fisheries Act* and the *Navigable Waters Protection Act*, restore lost protections, and incorporate modern safeguards.

On the Department of Transport's own site, it says:

The Minister of Fisheries, Oceans and the Canadian Coast Guard, along with the Minister of Transport, asked Parliament's Standing Committee on Fisheries and Oceans and the Standing Committee on Transport, Infrastructure and Communities to examine recent changes to the Fisheries Act and the Navigable Waters Protection Act and to hear from Canadians.

So the intent is to change things and turn back the clock.

Furthermore, the letter that we received from the Minister of Transport and Minister of Fisheries, Oceans and the Canadian Coast Guard is very clear:

As part of our mandate from the Prime Minister, we have been asked to work together to review the previous government's changes ... to restore lost protections and incorporate modern safeguards.

Madam Chair, if that does not tell the committee what results and conclusions to reach in its work, then what does? I don't see what the minister could have done differently in telling our committee to undo what the previous government had done, to destroy it and to study a way of doing things. All the witnesses we have heard—most of them, to be precise—have confirmed that—

• (0905)

[English]

**Mr. Angelo Iacono (Alfred-Pellan, Lib.):** On a point of order, please.

**The Chair:** Mr. Iacono.

[Translation]

**Mr. Angelo Iacono:** Madam Chair, I would like my colleagues to stop inventing falsehoods by claiming that the changes have already been determined. The government has not decided yet what the modern protection mechanisms might be, since the consultation has just started.

[English]

**The Chair:** Mr. Iacono, I'm sorry, but that sounds like it's a debate rather than a point of order that you're attempting to make.

I will go back to Mr. Berthold for his time.

Please keep your focus on why it is we are dealing with this issue before us. It is not that we are to undo anything. The minister has asked us to review it because of the lack of consultation in the previous government.

This committee can make a recommendation, along with three other committees, to strengthen it, to make it better, on behalf of all Canadians. That's exactly what the minister has asked us to do, which is what the committee is attempting to do, in spite of the opposition, which clearly has concerns that maybe we will end up going in a different direction than what I believe is the intent of the minister.

Mr. Berthold.

[Translation]

**Mr. Luc Berthold:** Madam Chair, with all due respect, I stress that the site of the Government of Canada says:

The Government of Canada has promised to review the recent changes to the Navigable Waters Protection Act, restore lost protections and incorporate modern safeguards.

It seems to me that the government has already made up its mind, despite all the fine remarks, all the goodwill and all the excellent questions my colleagues have asked the witnesses who appeared before us. We have actually been able to address some very interesting points, which may assist the minister in making decisions.

However, the minister has already made his choice. The government has already made up its mind. I think it is absolutely essential that we stop and that we take a moment to let the minister do his own work. He should then tell us himself what the changes are.

As I read earlier, the "Government of Canada has promised to review the recent changes to the Navigable Waters Protection Act". As far as I know, the committee is not the government.

It is also talking about "restore lost protections". For my colleague, that already clearly indicates that the minister intends to direct the work of our committee.

Finally, it says "incorporate modern safeguards". Two of the groups we received last week, the Canadian Construction Association and the Canadian Energy Pipeline Association, were quite clear on the issue. They said that the legislation had made it possible to carry out work at a lower cost and to improve the predictability of work schedules.

What do we need when we work in our communities? We want to complete the work within a reasonable time.

Everyone used to complain that anyone, at any stage, could decide that a small stream serving only as a runoff during heavy rains could become a waterway.

• (0910)

[English]

**The Chair:** I'm sorry, Mr. Berthold, but your time is up.

[Translation]

**Mr. Luc Berthold:** Thank you very much, Madam Chair.

[English]

**The Chair:** Mr. Hardie.

If we could just remember that we have a witness, Mr. Marshall, who is here to speak to these very issues.

**Mr. Ken Hardie (Fleetwood—Port Kells, Lib.):** I appreciate your attendance, Mr. Marshall. The intention to have you here was to hear what you have to say, so I do have some questions for you.

Part of the issue we're dealing with is that much like today, the members opposite didn't want to hear from a lot of people when the Navigation Protection Act was first brought in. This is part of what we're here to remedy.

Let's have a look at the Fraser Basin Council.

We've been told that under the current legislation, the Fraser River and its key tributaries are all fully protected. I guess the question is not looking so much at the flood issue, but at other things that may be going up and down the river. Have you noticed any difference in the approval processes for projects that are taking place along the Fraser River?

**Mr. David Marshall:** As to changes in the approval process, no, we haven't. In fact, I should probably qualify that. We're actually seeing a better approval process taking place due to the collaborative nature of bringing all the parties to the table early. Right now, there are 14 major watersheds in the Fraser system itself, like the Thompson, for example, the Quesnel, the Chilcotin, a number of different major watersheds.

We're encouraging a number of players—users of the watersheds, recreational, forestry, mining, along with the influences of those watersheds, whether it's first nations, the provincial government, the federal government—to come together and manage those watersheds in a much more collaborative fashion.

As a result, these types of issues are coming to the fore much earlier and dealt with quickly. We're seeing that type of approval process to be much more efficient.

**Mr. Ken Hardie:** According to your strategic plan now through 2021, you want to improve the sustainability of the watershed through improved planning and management. You want to improve the water quality, the fish and wildlife habitat, and also, of course, as you mentioned, increasing resilience to flood.

Is there anything in or missing from the current Navigation Protection Act that's working against these objectives?

**Mr. David Marshall:** From our perspective, no, there isn't. What we're trying to point out is the fact that we're looking at recreation, as well as commercial, and the act is acting as a catalyst to bring those together to make sure they're having a much more efficient collaboration in the decision-making around those watersheds.

**Mr. Ken Hardie:** As you know, the government has introduced three pockets of funding for infrastructure. The first is transit infrastructure; the second is social infrastructure, with things like affordable housing, etc., and the third is what we call green infrastructure, which includes community resiliency.

How familiar are you with the things that can be provided under that umbrella of funding?

**Mr. David Marshall:** We're not to a large degree, other than we're aware the communities that are dealing with particular issues, and not necessarily those along the river or waterways, are able to access that funding, and it's readily available. For example, with the government's announcement on the national disaster mitigation program, we've applied to the government to come up with money that would match the provincial funding. When the province launched phase two, it was \$1 million. We feel that in order to put the right process together and to make sure that we define the priorities, we must put in the right mitigation measures, and we need to get the right funding formulas in place to avoid the financial disasters that Alberta experienced in 2013. We need to come up with about \$2 million to \$2.5 million to put together the blueprint. It will allow us to avoid these types of losses.

The province has put \$1 million in, and we're looking at the feds through the national disaster mitigation planning, as well as the INAC funding that I talked about earlier, to match that money. Then the rest of the money would come from the municipalities, and from the transportation sector, etc., in order to be able to do that. It again shows the collaborative nature of the funding formula, but to answer your question directly, we are taking advantage of those particular funding pockets that have been made available by the federal government.

• (0915)

**Mr. Ken Hardie:** Dealing specifically with flood mitigation and the threat that it poses to navigation, have you developed a rough figure as to the kind of investment that would be necessary along the basin in order to preserve navigation?

**Mr. David Marshall:** Not specifically at this stage, but that's very much a part of phase two, because we're looking at the key groups. The port is going to be involved in that, as well as the wharf operators, the railways, and the airport. The entire transportation sector will be looking at it. We'll include the navigation component.

**Mr. Ken Hardie:** Very good.

You mentioned that there's a fair bit of collaboration in what's gone on so far. With communities specifically—and we know there are in the order of 21 municipalities in metro Vancouver—do you see a good sense of collaboration and organization synergy between what they're individually trying to do?

**Mr. David Marshall:** Absolutely, and I'd like to say it goes beyond those 21 municipalities. We're looking at the entire lower river from Hope to Richmond and from Squamish to White Rock, and that includes 28 separate municipalities. They are all vulnerable. They would all be exposed to significant risk. It's not just the ones that are on the river, but there are ones like the city of Langley that would have transportation and communication lines cut if we had a flood of any type of proportion to the one that Alberta experienced in 2013.

**Mr. Ken Hardie:** Thank you.

**The Chair:** Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin (Trois-Rivières, NDP):** Thank you, Madam Chair.

Good morning, Mr. Marshall. Thank you for being with us.

My first question is in reference to the opening remarks you made, when you stressed the importance of complying with aboriginal treaties of indigenous nations. I was not in Parliament in 2009, when the entire process started. Perhaps you were already in the association.

Can you tell me whether the consultations held in 2009 and later seemed appropriate to you in terms of the desire of indigenous peoples to be part of amending this act?

[*English*]

**Mr. David Marshall:** To a certain extent, I do, but there's always room for improvement. We've been dealing with first nations since the inception and establishment of our organization in 1997. They were the founding members of our organization. They still represent close to 25% of our membership on our board of directors.

We have 12 principles in our charter for sustainability. The 11th principle talks about recognizing aboriginal rights and title, so we have a policy within our organization that everything we do must ensure that first nations' rights and title are part of those considerations.

To give you an example, one of my staff was meeting with the first nations leadership yesterday on ensuring that first nations are going to be fully involved in phase two, which I mentioned earlier, as well as all types of work that we're dealing with. Much like in the first question that I answered with respect to collaborative processes, first nations are always at the table when we're making recommendations or decisions with respect to the sustainability and safety of those watersheds.

[*Translation*]

**Mr. Robert Aubin:** At the beginning of your answer, you stressed that there's room for improvement. What would you add to make the consultation process to your liking?

[English]

**Mr. David Marshall:** Number one, we're finding out, is meeting with first nations right from the outset. Sometimes it's a little bit too late in the process. For example, we had a board meeting a couple of weeks ago. You may not be aware of this, but the first nations of British Columbia have formed what's called the First Nations Leadership Council. It's made up of three of the major groups in British Columbia: the Union of British Columbia Indian Chiefs, the First Nations Summit, and the regional office of the Assembly of First Nations.

We had representatives of all three at our board meeting talking about the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, the new FPIC, the free, prior and informed consent principle, and the recommendations of the Truth and Reconciliation Commission report. We've asked them how we can help facilitate some more attention around those.

These are some of the specific things we could probably get started on in order to improve our work with first nations.

● (0920)

[Translation]

**Mr. Robert Aubin:** Thank you.

I have another question I'd like to hear your opinion on.

Transport Canada's navigation protection program no longer accepts complaints about work that is not on designated waterways. The people who feel harmed must now go to court to make their case.

Do you think it's normal to have people go to court to make their case?

[English]

**Mr. David Marshall:** We absolutely do not. We prefer to avoid the courts, if at all possible. That's why I emphasized in an earlier question the importance of bringing people together right from the outset, trying to respect their various interests, looking for the common ground, working together in coming up with practical solutions, and moving forward.

To give you an example that I think relates to navigation, a few years ago there was always the continuing risk of flooding in the Fraser River. Prior to that our salmon stocks started to disappear. People were worried, because they felt the habitat was being destroyed because of heavy excavation in the river to take gravel out of the riverbed. As a result, they felt there was some evidence of destroying critical habitat for salmon. There was therefore a moratorium placed by the provincial government on gravel mining in the Fraser River. The federal government's Department of Fisheries and Oceans supported it. Then the local government politicians became concerned, because they felt that the riverbed was starting to rise and that therefore we were putting the communities at risk from a flood.

We wanted to know what we could do. We brought together all the key interests, including first nations communities that were on the flood plain. We asked what we could do to try to ensure safety while taking into account navigation interests, flood protection interests, as well as salmon interests.

We came up with a five-year gravel management strategy that was agreed to by the federal and provincial governments and the first nations, which would determine when gravel could come out of the river, in what quantities, and at what location, in order to minimize the impact on salmon habitat.

That's a classic case of people coming together, avoiding the courts, and coming up with a practical solution. Most of our work is in that area.

**The Chair:** You have 35 seconds.

[Translation]

**Mr. Robert Aubin:** Thank you.

Did you have to go through the regulations to include a new body of water in the schedule of the act? If so, is it a complicated process?

[English]

**Mr. David Marshall:** No, we didn't have to do new legislation. We were able to draw upon existing legislation and find out what attributes of that legislation would help us move forward to get to the decision we wanted to reach.

**The Chair:** Thank you.

Mr. Fraser.

**Mr. Sean Fraser (Central Nova, Lib.):** Madam Chair, through you I'd like to thank our witness for coming here. Mr. Marshall, I find your testimony very valuable for the purpose of our study.

Here is just an introductory question. You mentioned the importance of both recreation and trade on the Fraser River. Of course, there are waterways all across Canada that aren't quite the same in scope, in terms of their trade or recreation volumes. Is there a certain volume at which you see it would be appropriate to include a specific waterway on the schedule? Is there a threshold that you think would be appropriate?

**Mr. David Marshall:** No, I would caution against that. I think it depends on the location of the river and the uses of the river. You could have a larger river in a relatively remote location that doesn't have the same sort of risks attached to it from commercial activity.

What you need to do is look at the critical importance of the river, its recreational value, its commercial value, and then determine at that point whether and where navigation fits in. I think that would be a better approach to take than trying to do it on size or length or whatever.

**Mr. Sean Fraser:** Thank you very much for your response.

You discussed the need for early resolution of potential disputes. Is there something that you think, from the federal government's perspective, through legislation or otherwise, we could do to encourage those conversations early, before it gets to a breaking point where you might have to consider the courts?



● (0925)

**Mr. David Marshall:** A good example is the one I was talking about, if we can come up with some sort of implementation mechanism under the Navigation Protection Act to be able to anticipate where there may be some risks associated with the navigation. For example, if the Fraser River wasn't on the list, obviously because of navigation being so important, it should be on the list, especially if it's going to be affected not only by human intervention but by natural causes such as the one I mentioned this morning.

**Mr. Sean Fraser:** Still on the topic of complaint or dispute mechanisms, if you can't sort things out on your own early on through the process, I'm a big believer in a more efficient process than taking things to the courts. I think if there were some kind of tribunal or independent body that would be less burdensome than the full civil litigation process, that would be a good thing.

Do you think that would be an appropriate step we could take as the federal government or a recommendation as a committee, to implement a body that is more streamlined, to hear complaints when they do arise?

**Mr. David Marshall:** That would be an excellent recommendation. It also enables me to talk a little about our organization, which we believe is very unique, as I pointed out and there are very few of its kind in Canada, in the sense that we do not take positions. We act as the catalyst, the honest broker, to bring those various players together, and then capitalize on the instruments, whether legal or information that works around the table to reach the solutions that I talked about with some examples earlier.

With that sort of model, hopefully then it becomes much more efficient and effective and avoids the courts almost in a way of, not so much a tribunal, but a safe place for dialogue and constructive decision-making.

**Mr. Sean Fraser:** Through the complaints process, in trying to flesh out what it should actually look like, would you suggest that perhaps almost a mandatory mediation or dispute resolution process would take place before you get to the next step of a tribunal or the courts? Would a staged dispute resolution process be appropriate?

**Mr. David Marshall:** Yes, absolutely, with one addition before you get into the mediation. With a process such as ours, it's more of a softer form of mediation facilitation, where there is a table for constructive dialogue set up, so people feel that they can put forward their case in a respectful manner, are listened to, and then hopefully move forward. If that doesn't work, then you go to a more formal side of mediation before you go to the courts.

**Mr. Sean Fraser:** Would the appropriate mechanism for us to establish that kind of process be right in the legislation, and we'd say to get in a room and have that pre-dispute conference, or whatever you'd call it, and once you've checked that box, you can talk about the next stage? Should we have a dispute resolution procedure right in the legislation?

**Mr. David Marshall:** I would certainly support that.

**Mr. Sean Fraser:** Excellent.

You mentioned the gravel example. In a lot of the discussions we've had so far, I've been envisioning much bigger projects, such as

dams or bridges being constructed over a waterway. Is there a certain limit or threshold we should have before we start considering what kind of work could actually be an obstruction for the purpose of the legislation?

**Mr. David Marshall:** Again, I'm always worried about setting specific numbers. I think it all depends on the points of consideration, the sensitivity of the waterway you're looking at, the navigation used, a number of different factors that need to be taken into account. That's a much better approach than putting a specific number.

**Mr. Sean Fraser:** I think I've exhausted my time. Thank you very much to the witness.

**The Chair:** Thank you.

Mr. Badawey.

**Mr. Vance Badawey:** I have to give a lot of credit to you, Mr. Marshall, for a lot of the issues you're dealing with and how you're answering the questions. You seem to be part of an organization that's taken the bull by the horns with respect to sustainability of the watershed, improvement planning, water quality, fish and habitat, wildlife, and increasing community resilience, river flood protections, etc. That credit is to be given because we don't always see that due diligence in organizations. They depend on others. Once again, I want to give you that credit.

I want to dig a bit deeper on process—I think member Fraser touched on it and so did member Hardie—that being, for lack of a better word, Mr. Marshall, a mechanism that you as an organization that is working extremely hard can be a part of, whether it be federal or provincial. I know in Ontario, for example, with the watershed, we have tribunals, courts of revision, a process looked after by the province, through the Drainage Act, as well as the municipalities.

This, quite frankly, is where we are right now, because there always seems to be loose ends, and when you have loose ends and you don't have a process that's part of that, what ends up happening is that you keep changing legislation, depending on which government happens to be holding office on that particular day, which we saw with the last government and the reason this government is trying to get away from that process.

Do you see a middle ground there, whereby, whether it be an organization, a level of government, a ministry, the Canadian Transportation Agency, a process delegated to an authority that can deal with a lot of these issues, especially with respect to appeals, would be appropriate?

● (0930)

**Mr. David Marshall:** Absolutely.

Before I continue with my response, thanks for your comments about our organization. It's very much appreciated.

I talked before about the safe tables, but our particular organization, if you look at its board of directors, has federal, provincial, local, first nations, private sector, and civil society all represented. To have that degree of participation is unheard of in Canada. They all sit at the table as equals and bring their attributes to the table. I feel that initially that's why we're able to sort out some pretty tough issues. It will be 20 years old next year, which is hard to believe. We've cracked some really tough sustainability issues, not only in the Fraser River system but elsewhere in the province of British Columbia.

When we get to the point where we're not able to crack the issues—and we do rely on a particular legal instrument, whether it's federal, provincial, and, in some cases, both. To just give you a quick example, some of you probably have driven the road to Whistler and gone by Britannia Mine. That used to be the number one pollution problem in North America. Nothing could live in the foreshore.

We wanted to host the Olympic Games in 2010, but it would have been an insult and embarrassment to Canada, so we brought together all the regulatory agencies and drew upon their respective legal instruments to sort out that problem. Now everybody comes from all over the world to see that solution. Pink salmon have now returned to Britannia Creek for the first time in 50 years. That was done by going to higher levels of authority at the appropriate time, not right off the bat.

**Mr. Vance Badawey:** What you're speaking of is combining the strengths and, therefore, the strategies: commercial, recreational, environmental, and dealing with the issues, but are they being dealt with? A lot of times they're not because we don't have an agency or a one-stop shop that we can go to, whether it be at the provincial, delegated by the federal government, or at the federal level. My point is that the process needs to be strengthened. You show your strategic plans and sometimes, because of those processes not being strengthened, they sit on the shelf.

When we look at watershed management, appeals, tribunals that would deal with those appeals, environmental issues and the challenges attached to them, when we look at funding and, as you spoke about earlier, leveraging that funding at all levels of government and organizations, would you find it would be a lot easier and a lot more streamlined if we had a one-stop shop, an agency that would look after that and deal with all issues, versus being ad hoc or knee-jerk and having legislation changed because of individual issues?

**Mr. David Marshall:** Absolutely. The part that really strikes me is that we would not have this document if there weren't that one-stop shop. For example, not one of these 43 funding partners could assume this responsibility on their own. It was broader than the provincial government, the federal government, or the first nations. You needed that organization to bring all that together. Without the Fraser Basin Council, there would not be a flood strategy for the Lower Mainland.

• (0935)

**Mr. Vance Badawey:** The reason we are here today and calling you as a witness is to establish it at the federal level. With your participation, and the participation of the different partners, that would streamline the process and, at the end of the day, get the job

done with respect to the recommendations that you have outlined in your strategic plan.

**Mr. David Marshall:** Thank you.

To add to that, there used to be a Fraser River estuary management plan for the lower Fraser, which brought together all the key authorities in that part of the Fraser. It included the port of Vancouver, the province, the feds, and metro Vancouver, and they were working together to manage the lower Fraser. That included looking at navigation, recreation, and fishing. It went kaput about four or five years ago. That particular organization no longer exists. We are away now from the one-stop shop and back to the old unilateral process.

**Mr. Vance Badawey:** Once again, hence the reason we are here today.... I thank you for that input.

**The Chair:** We're going to try to give you an opportunity here, even though we are going to get tight for time. You have your five minutes to go forward.

**Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC):** Thank you very much, Madam Chair. I do appreciate it.

I echo my colleagues' comments here this morning in terms of really appreciating the fact that you are here and that you are providing your testimony. We do appreciate the opportunity to add that to the conversation we are having, notwithstanding the fact that we believe there are perhaps some foregone conclusions to the conversation.

I want to speak to the notion that, when the act was changed back in 2012, and even before that, when we started to contemplate changes in 2009, there wasn't enough consultation. I find it passing strange that on June 16, ministers Garneau, LeBlanc, Duncan, McKenna, and Bennett announced that they would begin consultations on the Navigation Protection Act, yet in his appearance in front of the committee three weeks ago, the Minister of Transport stated, "We are currently not holding formal consultations."

This is perhaps supposed to be the broad consultation that the minister or the government would have said was lacking when the changes were made by the previous government, yet we find that there is very little appetite by many witnesses who have been contacted to come and participate in this consultation. What we have actually heard from those who have taken the time to come is that the act is working, that it is doing what it was intended to do.

I think even your own testimony would confirm this, when you said that there are better processes in place and that the act is acting as a catalyst, bringing the various parties together to have the conversations much earlier in the process.

I guess what I want to speak to, then, is something that my colleague across the way raised in terms of the complaint process. We know that there is a mechanism for individuals. First, we know that the minister has the authority to add waterways back under the protections, should a community ask him to do that. We also know there is a mechanism for the complaint process, as my colleague pointed out.

Are you aware of any complaints that have come forward that had to go through the process that has been embedded in the legislation since 2012, since the act was changed? If not, would you agree that a process that is acting as a catalyst, bringing people together much earlier in the process, means that there are fewer complaints?

**Mr. David Marshall:** No, I don't know of any specific complaints. I'd agree with you that it is acting as a bit of a catalyst, and if there is a community that has a particular waterway that is not on the list, there is a process in place for them to make the request.

**Mrs. Kelly Block:** I have to leave so I'm going to give the rest of my time to my colleague, if there is any left.

There's a minute and 20 seconds. Okay, thank you.

[*Translation*]

**Mr. Luc Berthold:** Madam Chair, let me take this opportunity to thank Mr. Marshall again for his very enlightening remarks confirming what the official opposition has been trying to make the government understand from the outset, namely that the study is premature as long as we don't know whether the changes made in 2012 are functional and whether they provide stakeholders with the latitude they need to take action.

In closing, Madam Chair, I would like to reiterate that we have heard from only one witness today. Given the organizations' lack of enthusiasm to appear before the committee as part of the study on the Navigation Protection Act, I move the following motion:

That the Committee invite no further witnesses to appear as part of this study, and that it wait for the upcoming amendments from the Minister of Transport before continuing its work.

● (0940)

[*English*]

**The Chair:** Does the committee wish to deal with that motion now or at our next meeting? We'll deal with it at our next meeting. It's a delay tactic, but we'll deal with that at the next meeting.

Mr. Marshall, thank you very much for coming. I apologize for the delay at the beginning, but we appreciate your time, your effort, and your comments very much as we move forward.

We will now move in camera, so would those who are not supposed to be at the in camera meeting please exit so that we can deal with some committee business.

**Mr. Vance Badawey:** Madam Chair, I have a point of order.

**Mr. David Marshall:** Madam Chair, I just want to thank you for the invitation and the opportunity, and for the excellent questions that were raised with me this morning.

**The Chair:** Thank you.

Mr. Badawey, you have a point of order before we close this part of the meeting.

**Mr. Vance Badawey:** Yes, before we close and go into a confidential session.

Earlier I had put a motion forward to adjourn debate, and I'm of the understanding, through you, Madam Chair, to the clerk, that once you put a motion forward to adjourn debate, it takes precedence. It is without debate, and being a dilatory motion, it has to be addressed once it has been placed on the floor.

Quite frankly, to the member across, I was trying to give him an opportunity to have more debate and proper consideration of his motion. With that said, the reason I put that motion forward was out of respect to the witness that was here, and out of respect for the limited time we had, because votes were being called at 10 o'clock.

I have a question through you, Madam Chair, to the clerk. Is that not the case? Once a motion is put forward to adjourn debate, one, it takes precedence, and two, it being a dilatory motion, it is without debate and must be addressed immediately.

**The Chair:** Can you address that today, or would you prefer to have some time to address it at the meeting on Thursday?

**The Clerk:** I would prefer to put it off. I'd like to see the transcript.

**The Chair:** We will deal with that issue as soon as we get back on Thursday.

**Mr. Vance Badawey:** Thank you, Madam Chair.

**The Chair:** Thank you for raising it. I think it's important to make sure that... From my perspective it's about respect for everyone and giving people a chance to get their points in.

**Mr. Vance Badawey:** That was my intent, Madam Chair.

**The Chair:** Okay, thank you.

We will now move to the in camera session.

[*Proceedings continue in camera*]





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