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November 25, 2004

Mr. Alan Tonks, M.P.
Chair, Standing Committee on Environment and
Sustainable Development
House of Commons
Room 609, 180 Wellington
Ottawa, ON K1A 0A6

Dear Mr. Tonks,

RE: Bill C-15, an Act to amend the *Migratory Birds Convention Act, 1994* and the Canadian *Environmental Protection Act, 1999*

I write as Chair of the Canadian Bar Association National Maritime Law Section (CBA Section) concerning Bill C-15, an Act to amend the *Migratory Birds Convention Act, 1994* and the Canadian *Environmental Protection Act, 1999*.

The CBA is a national association representing over 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA welcomes this opportunity to address your Committee and to convey the CBA Section's concern that the proposed legislation as currently drafted does not improve the law on the subject of marine environmental protection.

Ship-source Oil Pollution

Bill C-15 proposes to amend the *Migratory Birds Convention Act, 1994* and the Canadian *Environmental Protection Act, 1999* in large part to address the seemingly endless problem of the illegal discharge of oily waste at sea off the south coast of Newfoundland. One of the world's busiest shipping routes and one of Canada's most sensitive seabird habitats converge off the south east coast of Newfoundland and recent data from Environment Canada would suggest that more than 300,000 birds die each year as a result of ships deliberately dumping oily waste in the shipping channel.

Protection of the marine environment from ship-source oil pollution is a subject that is addressed in Canada today by a patchwork of legislation, policy and inter-agency agreements at both the national and regional level. Oil spill incidents over the years such as the grounding of the oil tanker, Arrow in 1970 and the break-up of the motor tanker, Kurdistan in 1979, in addition to a number of legislative initiatives, both domestic and international have resulted in this patchwork.

Today, the Government of Canada has both the *Canada Shipping Act* and the *Fisheries Act*, in addition to the legislation being amended at its disposal to address the problem of ship-source oil

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pollution off the south coast of Newfoundland. The view of the CBA Section is that the primary federal legislation to address the subject of ship-source oil pollution is, and should be the *Canada Shipping Act*. Shipping is an international business and the pollution provisions of the *Canada Shipping Act* draw heavily from international conventions such as the *International Convention for the Prevention of Pollution from Ships*, the *Civil Liability Convention*, the *Fund Convention* and the *Law of the Sea Convention, 1982*. Canada has adopted all of these Conventions.

The view of the CBA Section is that while the proposed legislation to amend the *Migratory Birds Convention Act, 1994* and the *Canadian Environmental Protection Act, 1999* may address the problem of oiled birds, it will only do so in part. The proposed amendments do not appear to take into account nor harmonize with other pieces of federal legislation or the applicable international conventions that address the subject of ship-source oil pollution in Canada. The CBA Section is of the view that these omissions in the proposed legislation may in fact weaken Canada's ability to respond to the illegal discharge of oily waste at sea off the south coast of Newfoundland.

Lack of Meaningful Evaluation and Consultation

The CBA Section is of the view that Bill C-15 is being rushed through the parliamentary process, as was its predecessor Bill C-34. The CBA Section generally cautions against the hurried adoption of reform proposals whose full implications cannot adequately be appreciated until carefully studied in a time frame conducive to meaningful evaluation and consultation.

In the late 1980s, two incidents on the West Coast of North America started a process which culminated in legislation in both Canada and the United States of America. The two incidents were the collision involving the tank barge Nestucca off the coast of Vancouver Island and the grounding of the oil tanker Exxon Valdez in Alaska. As a result of these two incidents the Canadian Government launched two initiatives; a federal internal review of marine spill prevention and response capabilities in Canada and the appointment on June 9th, 1989 of the *Public Review Panel on Tanker Safety and Marine Spills Response Capability*. The problem of the illegal discharge of oily waste at sea off the south coast of Newfoundland was considered by both initiatives. Green Plan monies funded some of the Panel's recommendations and amendments to the pollution provisions of the *Canada Shipping Act* received Royal Assent in June 1993, some four years after the two incidents and after much consultation with affected stakeholders.

Should your Committee revise its position regarding witnesses, the CBA Section would welcome the opportunity to meet with you to discuss these and other matters in Bill C-15 at greater length.

Yours very truly,

(Original signed by Trevor M. Rajah on behalf of Richard Desgagnés)

Richard Desgagnés
Chair
National Maritime Law Section