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—
Chair

Mr. Merv Tweed

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• (1120)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Good morning, everyone.

I have circulated a memo and information in regard to the issue that came up at our last meeting, to try to resolve it. I think it's been presented.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I would let the committee know that I did review the blues and there are some discrepancies in relation to what was finalized. It certainly wasn't what we remembered, or at least what most of us remembered.

This is a motion on time allocation for questioning witnesses. I'm asking that the motion agreed to on May 4, 2006, be rescinded, and replaced by the following: that witnesses be given ten minutes for their opening statement; that, for the questioning of witnesses, seven minutes be allocated to each party for the first round; and that, for all subsequent rounds, five minutes be allocated to each party for their members that have not yet spoken, starting with the official opposition, and any subsequent time would be divided evenly between opposition members at the discretion of the chair.

The Chair: Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): I understand that the parliamentary secretary is providing his notice of motion on the exact wording, which would mean that we would be discussing the voting on this at the next meeting.

The Chair: It's my understanding that he's making the motion.

Mr. Peter Julian: But he has to provide 48 hours' notice.

The Chair: As discussed at the last meeting, he was asked to bring forward this motion to clarify.

Mr. Peter Julian: He raised concerns about what he believed to be his motion, which actually was Mr. Laframboise's motion. What he is doing now is proposing a motion. That requires 48 hours' notice. So I will take it as a notice of motion for next Thursday's meeting.

The Chair: Mr. Jean.

Mr. Brian Jean: It's not a motion, it's a clarification of the blues. My understanding further is that a notice of motion was....

I don't know what form this motion is required in, but certainly all parties were aware that this was going to be brought forward,

because the committee asked that it be brought forward at this particular meeting.

The Chair: Any other comments?

The advice I've received is that it is not a new motion, it's a clarification, and we can actually vote on it today, as discussed at the end of last meeting.

Mr. Peter Julian: Mr. Chair, what was discussed at the end of last meeting was to clarify what was in the blues. Obviously Mr. Jean has done that. Since we don't have copies of the blues in front of us, I believe what he's doing is introducing a notice of motion. That is, of course, his right, but we've already established rules of procedure, and these require 48 hours for a motion with the exact wording, as he is presenting to us now.

I wouldn't suggest that we spend any more time on this today. Very clearly it's a notice of motion that would come to Thursday's meeting. We should move on and proceed to the witnesses.

The Chair: My advice is that the direction was given to bring this back to this committee to be dealt with at this meeting, and that is what I'm prepared to do.

Mr. Peter Julian: There are no blues, Mr. Chair.

The Chair: The blues have been checked and the clarification is in front of you. If you want to check the blues, you're entitled to do that.

Mr. Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): You are telling me that the clarification is right here before me. It is written only in English, and that annoys me quite a bit.

Mr. Peter Julian: Documents must be identical in both languages. I'm sorry, but I think it would be more appropriate to hear from the witness.

[English]

Mr. Brian Jean: Sorry, Mr. Chair, this is not included in my motion. It has nothing to do with my motion.

The Chair: It was for the direction for the committee that I asked to have it. It was just so that you could actually see it. It's not part of the motion. The motion is in French and in English...or the clarification.

I'm sorry, you should have it.

Mr. Peter Julian: Mr. Chair, given the circumstances, maybe we should just proceed with the meeting.

I would strongly urge the chair to follow the rules of procedure that we adopted at the beginning of this session. They indicate a 48-hour period for notices of motion. We now have wording of a motion. The 48-hour period would start from the moment we received that. We can proceed to discussion and debate on Thursday.

I don't understand the urgency of trying to ram this through improperly, with English-only documents supporting it.

The Chair: I would have to clarify, Mr. Julian, that the motion is in French and English. It is a clarification, and the instruction was given to the committee last week to bring it forward. The discussion we had at that meeting was whether we would bring it forward at the beginning or at the end of this meeting. The motion is on the floor.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: The motion as tabled amends another motion. Can the clerk reassure me that the motion we are voting on today is in accordance with the Standing Orders of the House of Commons? The motion must be consistent with the rules, since it is not a clarification. It reads: "That the motion agreed to on May 4, 2006, be rescinded, and replaced by the following:". This motion, therefore, replaces the one that was adopted.

I agree completely with what as been tabled, but it must be done in accordance with the rules.

[*English*]

The Chair: My advice is that it is in accordance with the rules.

Mr. Julian.

• (1125)

Mr. Peter Julian: This motion has just been distributed; there's no clearer contravention of the code of procedure we've put in place. This motion has just been distributed. We have just seen it. We now have to consult with our caucuses and consult with our whips. This motion has just been distributed. Given that we adopted, as a committee, the procedure that notices of motion require 48 hours, like every other committee has, and given that this procedure has been enforced by every other committee that I am aware of....

This is a notice of motion. It is not a motion that's to be brought forward, it is a notice of motion. It will be debated and discussed at our next meeting.

Mr. Chair, there can't be a clearer contravention than this of the rules of procedure that we put into place. I don't understand why you're trying to push this when very clearly we adopted rules of procedure and very clearly we have just received a motion. In 48 hours, on Thursday, we will debate it and discuss it.

The Chair: Mr. Jean.

Mr. Brian Jean: I think the difficulty, Mr. Chair, is that some people consider this to be a new motion, and other people in the room who discussed this when Mr. Julian was present and very angry with the situation that had arisen as a result of this particular motion....

Most of us feel it's a clarification of a mistake that was made in the blues, or at least a mistake or misrepresentation of what was discussed and what we believed we voted on. That's the situation.

This is not a new motion. This is a situation where we're trying to clarify what took place and what was incorrectly followed on the last meeting.

The Chair: Mr. Hubbard.

Hon. Charles Hubbard (Miramichi, Lib.): Thanks, Mr. Chair.

We have witnesses here this morning. It's a five-minute thing we're arguing about—five minutes today or whatever.

The second point is that this document that was circulated to us is only in English. In fairness, I think we have to make sure....

Probably it's best to proceed with our witnesses this morning and to table Mr. Jean's motion until Thursday, when it will be dealt with. That way we can proceed with our agenda.

The Chair: Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Are we actually meeting Thursday?

The Chair: That's something we have to discuss at the end of this meeting, too, with the visit of the Prime Minister of Australia.

Just for clarification, this was something I asked the clerk to prepare, just so that we could actually see it. Whether it's part of the motion or not....

Hon. Charles Hubbard: The only point, Mr. Chair, is that I think we have to establish that any piece of information circulated at this table must be in both official languages.

The Chair: Good point.

Hon. Charles Hubbard: If we start the other way, we're just going to get ourselves into...*très difficile* here. It's not a very good way to start.

The Chair: Mr. Bell.

Mr. Don Bell: I'm sympathetic to the points raised by Mr. Jean, but I would say that what we're talking about for today—and we've got witnesses to get going here—is an extra seven minutes, because that's all it would be for the second round. It isn't round and round.

In the interests of getting going, I would suggest—changing my attitude previously—that we put this off until the next meeting and resolve it then. We can circulate everything to meet the requirements so that we don't get hung up on technicalities.

I agree with the intention that I had understood we dealt with, and how the motion was relayed is not what I thought. This represents what I thought we would be doing. Procedurally, though, I say we get on with today and bring this back so that we can deal with it appropriately.

The Chair: Agreed?

Some hon. members: Agreed.

The Chair: Thank you.

We'll now move on to orders of the day, Bill C-3, an act respecting international bridges and tunnels and making a consequential amendment to another act.

I would like to welcome our witnesses. I would ask that you introduce yourself and proceed.

Mr. Thomas Garlock (President, Bridge & Tunnel Operators Association): Thank you, Mr. Chairman.

My name is Tom Garlock. I'm the general manager of the Niagara Falls Bridge Commission, and I'm also the president of the Bridge and Tunnel Operators Association.

With me today is Mr. Ron Rienas, the general manager of the Buffalo and Fort Erie Public Bridge Authority, and one of my associates from the Niagara Falls Bridge Commission, Mr. Ted Gibson.

[*Translation*]

I'm sorry, but I do not speak French.

[*English*]

Members of the standing committee, thank you for your courtesy in permitting me to address you on behalf of the Bridge and Tunnel Operators Association concerning the provisions of Bill C-3, a legislative initiative that is important to the interests of Canada.

The Bridge and Tunnel Operators Association, comprised of the 10 entities responsible for 11 of the international crossings between the province of Ontario and the states of Michigan and New York, works diligently to support the efficient movement of people and commerce over the Canada-United States border. The BTOA, as we are known, is acutely aware of the importance of an efficient border to Canada's competitive economic position in the world.

We have carefully followed the development of the legislation before you since it first appeared in a previous Parliament as Bill C-44. While I am appearing today on behalf of the members of the BTOA, I advise you that individual operators may offer testimony or comments independently that will reflect their particular view or circumstance. However, the issues I raise today are of consequence to all the members of the association. They have asked me to bring them to your attention, as well as specific language recommendations for the bill that would cure what we are advised will be unintended consequences of the present language.

On at least three occasions over the past 18 months or so, Canadian officials have generally advised us of the intended legislative provisions together with their reasoning and expected outcomes of the legislation. While we appreciate the information, there are two areas within the legislation that we have explained would be injurious to crossing operators in a way that is not intended by the legislation.

The first and most significant issue deals with the intent to approve the setting of tolls, fees, and charges. The majority of the BTOA members are financially independent and fund their operations and capital improvements from toll revenue. It is that revenue that is pledged to bond holders to raise capital for significant projects.

As I am certain you can appreciate, bond holders require that issuers have the ability, means, and flexibility to manage their revenue sources in such a way that debt obligations are repaid according to contractually agreed terms. In the event that financial markets sense an issuer may be constrained in managing its funding streams, there is a direct negative impact upon the issuer's rating that could have the effect of dramatically increasing future borrowing

costs. I can also assure you that this language may be troubling to present bond holders as well.

We brought those concerns to the attention of officials concerned with drafting Bills C-44 and C-3. Last year, we also arranged to have officials briefed directly with bond counsels by teleconference. At this time, in response to Bill C-3, we have written statements from two bond counsels, a financial adviser, and a rating agency that have acted on behalf of four of our members.

At the moment, all communications are available in their original language only, but we will be pleased to provide translations as soon as possible.

Permit me to give you the details of the contents of these communications. Standard and Poor's rating service has advised the Blue Water Bridge Authority as follows:

The BWBA's current toll-setting autonomy is one of the authority's more important credit-supporting features. The draft legislation, as currently published, would not actually impose any constraints on the BWBA's toll setting autonomy, but simply specify that the government had the power to do so. Rating action of any kind would be unlikely, unless the BWBA were to receive official notice of the government's intent to disallow or limit the magnitude of a toll increase proposed by the BWBA or force a reduction to existing tolls without any mitigating policy initiatives and we were to judge that such a constraint stood a reasonable chance of materially affecting the BWBA's debt service coverage ratios. Given the BWBA's status as a federal non-guaranteed Crown corporation, we do not expect the government to take any action which would diminish the rights of the BWBA's creditors without concurrent and offsetting policy adjustments.

• (1130)

Roosevelt & Cross Incorporated, financial advisers for the Niagara Falls Bridge Commission, has commented on the impact of clause 15 of the bill. They say that the resolutions authorizing the issuance of the commission's bonds specifically require that the commission at all times charge and collect tolls sufficient to generate net revenues equal to at least 130% of maximum current or annual debt service and 100% of any deficiency in the reserve account. Bill C-3 conveys very broad powers regarding fees and tolls to the government and provides no assurance of any kind that the commission's ability to charge sufficient tolls will not be impaired in the future by a decision of the government. Credit analysts for the rating agencies and for purchasers of any future bond issues that the commission may choose to issue to finance capital outlays will definitely take a negative view of the impact of Bill C-3 on the credit of the commission. This, in turn, will increase the cost of capital for the commission and possibly limit its access to the capital markets. The market for outstanding bonds of the commission could be damaged by the uncertainties created by the bill, possibly creating financial penalties for the holders.

I am aware that the committee has heard directly in writing from the Buffalo and Fort Erie Public Bridge Authority on the matter of bond market impacts. Again, we have copies of correspondence for your review.

You will note common threads among the written advice that we have received, and I would add that other members of the BTOA have expressed similar concerns. You will also note that we have indeed had conversations with our financial experts.

Paragraph 15(b) of Bill C-3 stipulates that the Governor in Council may, on the recommendation of the minister, make regulations respecting the tolls, fees, and other charges that may be imposed by owners or operators of international bridges or tunnels for their use to ensure the efficient flow of traffic. While we understand the government's interest in prohibiting activity in this area that could be deemed predatory and contrary to the goal of efficient movement of traffic, we are most concerned that bond holders and rating agencies would regard this language, as written, with alarm. In light of that, the BTOA submits additional language in that clause for your consideration.

Clause 15 of Bill C-3 would be amended so that clause 15 in its entirety would become clause 15.1. A new clause would be added immediately following paragraph 15.1(e), which would be 15.2. It would read as follows:

Notwithstanding all other provisions of this section, no action by the Governor in Council, on the recommendation of the Minister, shall be taken under this legislation or in ensuing regulation that will adversely affect the commercial or financial viability of owners and operators of international bridges and tunnels in the operation, use, tolls, fees and charges for which they have legal jurisdiction and liability. Any such action shall only be taken in the interest of addressing existing, demonstrated negative impact upon the efficient flow of traffic over the border.

We believe that this addition will preserve the government's ability to address the matters with which it is concerned while clarifying that owners and operators will be able to continue managing their financial affairs in the most efficient manner in accordance with their legal obligations.

The second area of the bill that we believe can be improved without diminishing the government's interest is clause 4, which deals with the relation of the act to other regulations now in place. The BTOA understands the interest of the government in regard to maintenance, security, and safety of international bridges and tunnels, and the members of the BTOA are equally committed to exemplary performance into those areas.

The members historically have followed the safety standards of the province or state in which they make landfall, adapting the more stringent of the two. This has also been the case with security, particularly in the wake of the events of 2001, and we willingly comply with the requirements of a wide range of agencies, including, but not limited to, Transport Canada, RCMP, OPP, the United States Coast Guard, the Canada Border Services Agency, and the United States Department of Homeland Security.

We believe that in most cases the interests of Bill C-3 are already being served through any number of agencies, and respectfully request that the statute provide for the recognition of existing requirements by including language that will do so.

• (1135)

The BTOA recommends that clause 4 of Bill C-3 be amended by adding a new subclause (5), to read as follows:

Prior to the creation of any regulations made under this Act establishing standards regarding maintenance, repair, security and safety of international bridges and tunnels, the Minister shall examine Provincial and other agency requirements for the purpose of acceptance of such existing standards and/or regulations as being sufficient to fulfill the intent of the Act.

This language in no way limits the minister's authority, but does cause a review to avoid the reinvention of the wheel, so to speak.

Finally, it is most important that I assure the members of the committee and all of your parliamentary colleagues that the members of the BTOA clearly understand their unique obligation to the people of Canada and the people of the United States to maintain an efficient border between these two great countries. As you know, in many instances our members operate in close geographic proximity to one another, working together to offer our travellers greatest efficiency, rather than an adversarial competitive environment that considers only self-serving goals.

We can assure you that we will continue to work carefully with the Government of Canada to ensure an open, efficient, and safe border.

Thank you, Mr. Chairman. At this time, I would be pleased to respond to any questions the members might have or to receive their comments regarding my testimony.

• (1140)

The Chair: Thank you for your presentation.

I'll ask for questions.

Mr. Bell, go ahead, please.

Mr. Don Bell: Sir, I would like to ask what the differences are between the U.S. code and the Canadian code. You talk about dealing with the more stringent areas in the landfall of your facilities. What are the significant differences that you fear?

I know you're concerned about the open-endedness, as I understand it, of the phraseology that's included in the bill, and the worry is not so much what is in the bill as what could come out of an interpretation, if you want to call it, in the future. Is that correct?

Mr. Thomas Garlock: That is correct, Mr. Bell. We're looking for parliamentary direction in this area to make it part of policy.

As far as the requirements go, Mr. Rienas, at the Buffalo and Fort Erie Public Bridge Authority, and I, at the Niagara Falls Bridge Commission, presently work with Ontario's and New York's safety standards. They are similar in many respects, but in any instance when one is more stringent than the other, we automatically adopt the more stringent standard. This goes for things such as bridge inspection. We have to give our inspection teams specific guidelines to follow in inspecting the structures to make sure that they are safe.

I might add, too, that usually the provincial and the state standards would be for "every other year" inspection. I can tell you, at least in our case, and I think in the case of a number of other operators, we do annual inspection.

Our point here is that we would encourage the minister to look at the language of existing regulation out there, rather than to immediately proceed to create new federal regulation that could be redundant. If there's a compelling interest on the part of the Government of Canada, clearly that has to be addressed, but we're just asking that we take a look at what is existing.

Mr. Don Bell: From your reading into the proposed legislation, what are the differences you see between existing regulation in Canada and the regulation at present on the U.S. side—I forget the phraseology—the presidential permit process? It was supposed to be faster. Have you actually found the U.S. process to be sped up?

Mr. Thomas Garlock: In this instance, looking at what is envisioned in the bill and at the procedure under the presidential permit process, I think a great deal of parity has been achieved. A lot of the same issues dealing with new construction or with significant alteration to a span or to a tunnel will be looked at from the perspective of each of the two countries. So on that level there is consistency, and we really don't have a serious argument with that particular part of the language. In the area of security and safety inspections of the span, we have some concern that we could see a new layer of regulation appear that conceivably would be redundant considering the regulation that we're already complying with.

The permit process and the process for improving a new span or a significantly expanded span are very similar now to that described in this bill and to what the United States has done historically.

Mr. Don Bell: You mean for a new span?

Mr. Thomas Garlock: Precisely.

Mr. Don Bell: Regarding maintenance on the existing span—just so I understand—is it indeed in the middle of the bridge where the U. S. regulations take over? Is it physically at the boundary line? How does that work? Left span, right side, left span—you know, starboard and port?

Mr. Thomas Garlock: Technically that's correct, but practically it's not. Maintenance has traditionally been a purview of the provincial and state governments. We receive very little, if any, direction from the United States Federal Highway Administration there. Technically, the standard on the bridge stops at the border, but to ensure maximum safety and efficiency we adapt the most stringent standard and apply that to the entire span. So if in this case Ontario's requirement is stronger than New York's, New York is more than satisfied that we've followed the Ontario provisions because they certainly satisfy their interest.

• (1145)

Mr. Don Bell: Your biggest problem is not any specific wording, other than the open-endedness that appears to be in their legislation.

Mr. Thomas Garlock: That's true, in the area of regulation.

Going back to the language concerning setting of tolls, fees, and other charges, we think it is very important to financial markets that Parliament make a policy statement in statute, rather than waiting to have this clarified in regulation. I know I don't have to explain to the members that financial markets can be very sensitive to nuance, and if they believe that our ability to manage our funding stream is going to be undermined by activity on the part of the government, it's going to have an impact on our rating.

By way of example, at the Niagara Falls Bridge Commission we work very diligently to improve our financial standing. We support all of our activity by virtue of our tolls, fees, and charges. The first exception in more than 68 years has been the partnership with the Government of Canada and the Province of Ontario on the BIF. That resulted in major improvements on both the Lewiston-Queenston and Peace bridges. But as far as ongoing operation, we support

ourselves. We go to the bond market to fund our capital projects, and if the financial markets believe that our ability to fund this is going to be impaired, it's problematic.

I started out by saying we work diligently to improve our financial standing. In 1993, when we made our last significant bond issue of \$130 million U.S., we had a triple-B rating, so our cost to borrow was not insignificant. Through careful management in the years since then, by 2003 when we did a refinance, Standard & Poor's rated us as an A. You can appreciate how dramatically our cost to borrow went down.

Obviously these costs are ultimately borne by our toll payers—Canadians, Americans, and visitors to the two countries. In the instance of the not-for-profit operators, we have a powerful incentive to keep all of our costs low so we don't have to pass them on to our toll payers.

Mr. Don Bell: What mechanism is in place now for dealing with complaints and tolls?

Mr. Thomas Garlock: Again, for all of the not-for-profits, we are governed by various boards and commissions. In the instance of the Buffalo and Fort Erie Public Bridge Authority, the five Canadians are federal appointees. The Americans are appointees of various offices of the State of New York. In the instance of the Niagara Falls Bridge Commission, my Canadian commissioners are appointed by the Premier of Ontario, and the Americans are appointed by the Governor of New York. It is their specific role in statute that created our entities to address local community concerns. So when we have any kind of complaint from the public, they are very responsive to it.

I might add that in our enabling legislation, the guidelines for our creation of toll structure are very clear. We're to collect tolls only to satisfy our capital purposes, our ongoing operations, and there's specific language that limits how far we should go.

The Chair: Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you, Mr. Chair.

I understand your problem, and I'm aware of the importance of not having your capacity to raise capital be affected.

We had discussions with officials from the Department of Transport, and we asked them many questions, particularly on section 15 and the fact that they want to get involved in toll stations. They seem to believe that you are creating traffic congestion to make more money and that traffic flow is a problem. They claim to want to ensure smoother traffic, because currently, in some cases, too many people are using your bridges and tunnels when there are other routes they can take. Simply put, do you acknowledge that there is an actual problem, or do you believe that Transport Canada is creating one?

• (1150)

[*English*]

Mr. Thomas Garlock: No, Monsieur, I would not say that it's not true, but it may be a misinterpretation.

I don't believe there is a correlation between congestion at the border and toll structure anywhere at this time. I do believe that in drafting the bill, the agency is concerned that in the future, in the case of our two crossings.... I operate three bridges on the northern part of the Niagara River, and Ron operates one bridge on the southern part of the river. I think that the Department of Transport would be concerned that if I were to drop the toll for transport trucks to a dollar, for example, transport truck traffic would suddenly dry up on the Peace Bridge. That would diminish his ability to recover the revenue to satisfy his bonds; that would be a predatory practice.

Conversely, if a crossing was not as close as we are—with a considerable distance to the next crossing—an operator could engage in predatory practice by charging a very high toll, which would be unfair to toll payers.

I believe it is those extreme situations that the minister would want to address. In no way does the language that we proposed to you this morning impair the minister's ability to intervene in those situations.

I don't know of any instance when congestion is related to tolls at this point in time. In fact, on the international bridges, congestion is usually the result of what is happening in one plaza or the other, with either the United States Customs and Border Protection or the Canada Border Services Agency, with all due respect. We take your money very quickly and send you down the way.

It is this predatory practice that the agency is concerned with, and the minister would be in a position to address it.

I hope I have answered your question.

[Translation]

Mr. Mario Laframboise: Yes.

There are many bridges and tunnels in Ontario. Your association manages a few of them. However, doesn't the province of Ontario have a procedure to solve these problems? If, as you say, predatory practices are going on, does the legislation allow the Government of Ontario to intervene? I know that the Province of Ontario manages several of these bridges.

[English]

Mr. Thomas Garlock: Actually, Ontario is directly responsible only for my crossing. At the other crossings between Ontario and New York, it's either the Federal Bridge Corporation, or the federal side of the Buffalo and Fort Erie Public Bridge Authority, or the Blue Water Bridge Authority at Point Edward.

In the instance of my three bridges, yes, the province has a direct ability to intervene because the four commissioners are appointed by the premier. And believe me, we are very responsive to the interests of Ontario officials, given that they are the people we work for.

I don't quarrel with the minister's interest in having a role in tolls, fees, and other charges when it has a direct, devastating impact on border efficiency. Clearly that is a national interest; I cannot quarrel with it.

We're only concerned that we don't send the wrong message to financial markets, particularly the not-for-profit entities that float bonds in the public markets. In our case, we're able to float bonds that are tax-exempt in the United States, making our borrowing cost

very low. But if those markets believe that our ability to set the revenue streams to satisfy the bonds may be impaired by the minister's activity, we're going to pay more to borrow the money.

[Translation]

Mr. Mario Laframboise: There's talk about setting up a procedure to deal with complaints regarding toll stations. There would be an applicable procedure, as well as a person or organization responsible for dealing with complaints. Do you have an idea of how this would be done in our organization? Have you had discussions with Transport Canada, or do you prefer to let the department delegate the organization that would receive the complaints?

● (1155)

[English]

Mr. Thomas Garlock: I think it's a combination of both, quite frankly. I will tell you that right now, with the Canadian dollar strengthening against the United States dollar, we are starting to hear from some of our bridge and tunnel users. I know from talking to my colleagues that just about everyone I'm aware of is ready to address that situation.

We went from a significant disparity between the two currencies not long ago to now climbing very close to parity. But we are not insensitive to that, particularly those of us who have been established with public benefit corporations. We have to respond.

I will give you the example of how the Niagara Falls Bridge Commission began. I wouldn't be with you today if it weren't for a terrible accident. There was no loss of life, but when the Falls View Bridge—the Honeymoon Bridge—collapsed into the gorge in January 1938, it was owned by a private operator. At that time communities on both sides of the river were having some issues with the operator, and they said they had an interest in having a quasi-public entity do this because they wanted the entity to be responsive to the community. That's why the Niagara Falls Bridge Commission was created. That is why we have four Canadian commissioners and four American commissioners, to be sensitive to the interests of the communities we serve.

Finally, we perform many public purposes. In Canada, under section 6 of the Customs Act we provide hundreds of millions of dollars of infrastructure, usually at no cost whatsoever to the government. As I say, the border infrastructure fund of late has been an incredible tool in improving border operations, but generally speaking we pay to build these facilities for CBSA, and even more important, we continue to pay to maintain them. In the instance of the Niagara Falls Bridge Commission, I would estimate that cost to be about \$4.5 million a year that we bear.

So obviously it is not an inexpensive pursuit operating an international crossing and making sure that it is done in a safe and efficient manner that is responsive to the interests of the people of Canada and the people of the United States. We are asking the committee and your colleagues in Parliament to clarify this language on fees and tolls so that we are able to do that efficiently and at the lowest cost to toll payers.

The Chair: Mr. Julian.

Mr. Peter Julian: Thank you very much, Mr. Chair.

Thank you very much for coming here today.

Remind me, Mr. Garlock, of the number of members you have on the Bridge and Tunnel Operators Association.

Mr. Thomas Garlock: Mr. Julian, there are 10 members responsible for 11 of the crossings between Ontario and New York and Michigan. The anomaly is that on the Canadian side, the Blue Water Bridge is operated by the Blue Water Bridge Authority, a Canadian crown corporation, and it's operated by the Michigan Department of Transportation on the U.S. side.

The other anomaly is that the Niagara Falls Bridge Commission is the only entity responsible for multiple crossings—the Rainbow, Whirlpool Rapids, and Lewiston-Queenston bridges.

Mr. Peter Julian: And each of those members is essentially from the private sector, or are some of them from the public sector?

Mr. Thomas Garlock: Actually, there is only one truly private sector member, and that is the Ambassador Bridge between Windsor and Detroit. The remainder are public benefit corporations. They've all formed a little bit differently. They all came about in a different way.

I explained how we were created. I will tell you how the Peace Bridge came about. It was built in 1927, but in the financial difficulties of 1929 the private owner went broke. That's when the Government of Canada and the State of New York stepped in to create the Buffalo and Fort Erie Public Bridge Authority.

So the Ambassador Bridge is a privately owned, for-profit crossing. The others are in some way, shape, or form a quasi-public-benefit corporation.

Mr. Peter Julian: Coming to the consultations, you mentioned three consultations with the ministry through the process of the elaboration of the legislation. Did the first consultation talk about some of the needs that bridge and tunnel operators may have?

• (1200)

Mr. Thomas Garlock: I believe that it did—and when I say three; it was at least three, but I'm not sure if my memory—

Mr. Peter Julian: It could be more?

Mr. Thomas Garlock: It could have been more. It was in regard to Bill C-44. There was some general discussion, and I will say that Department of Transport staff have been exemplary in keeping us aware of the progress of the bill. But I am here today because while there may be some belief that some of our concerns could be treated in regulation, again, I can't stress strongly enough the need to have a policy statement in statute.

I think when you have an opportunity to read the comments of the bond counsel, the financial adviser, and Standard & Poor's that we have brought with us today, it will help you more clearly understand our bit of anxiety over the language concerning tolls, fees, and charges, and in the area of safety and security, our interest in avoiding redundancy.

Mr. Peter Julian: You will be providing those letters to the clerk for translation, so we can circulate it to the committee?

Mr. Thomas Garlock: We have, sir.

Mr. Peter Julian: The three consultations or more—are we speaking more informally, or were they formal? Did the ministry sit down and basically run you through what the legislation would contain and give you the opportunity to raise concerns?

Mr. Thomas Garlock: They were rather formal, and ministry staff travelled to Toronto on one occasion to meet the members of the Bridge and Tunnel Operators Association.

Just after Bill C-3 was introduced the agency arranged a conference call, not only with the bridge and tunnel operators, but with the railroads as well, with affected constituencies. The agency made a very strong effort to brief us on the provisions.

Mr. Peter Julian: Did you see progress as the consultation process moved along? Did you see the legislation develop in a way that responded to some of your concerns?

Mr. Thomas Garlock: In all candour, there has been a measure of empathy for our concerns by the agency, but steadfastly they have felt our concerns could be treated in regulation. This is even after we arranged for bond counsel to spend significant time in a teleconference with agency staff to explain the sensitivity of financial markets to the language that is present in the bill.

They have been empathetic, they have listened, but I think there may be some difference of view of how this should be approached, whether through regulation or through statute.

The members all know far better than I that statute is a serious matter, addressed by Parliament, by the people's representatives. It is not easily and quickly changed, and because of that it would give financial markets a sense of stability.

The regulatory process, while consultative, can happen more quickly with more frequency, and I don't think it would convey the stability that a change in the statute would convey to the financial markets.

Mr. Peter Julian: Yes. So basically through that process you saw some improvements, but there are two areas where very clearly you have concerns. What I hear you saying to the committee is essentially there's a sort of perverse impact when we look at clauses dealing with tolls, that essentially it will be of higher cost potentially for you to undertake capital expenditures if the statutory legislation is not changed.

Mr. Thomas Garlock: That would be correct. The law of unintended consequence is afoot here, no question about it.

Mr. Peter Julian: Do I still have 30 seconds?

I'll save most of my questions for the next round, but just on the area around regulation, I missed the comment, but I think I understand the intent.

Around the regulation, are there significant differences between how New York and Michigan approach regulation? Your members are basically split between those two jurisdictions. Do you see significant differences between how those two states approach?

•(1205)

Mr. Thomas Garlock: In the areas of safety and security, I don't believe so. Both the province and the state have been in this business for a long time; they've had significant experience with infrastructure; they understand the standards that will preserve the safety of the infrastructure.

I can tell you the State of New York has done a great deal of work with regard to bridges. I was involved in state government in 1987 when the Schoharie Creek Bridge on the New York State Thruway collapsed, and I can tell you that it's a matter of high priority for them. I don't think it is any less a priority for Ontario over Michigan.

Again, I don't want to leave the members with the thought that we believe the minister is going to promulgate a whole new set of regulations. Indeed, we recognize that in some areas the minister may be compelled to do that. But in our second amendment language we're simply asking the minister to consider existing language standards oversight in the event it would meet the intent of the act. If the minister in his or her wisdom decides it does not, there's certainly nothing in that language to prohibit promulgating regulations believed to be in the best interests of Canada.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

To follow up on Mr. Julian's questions, first of all, I appreciate the fact that you're generally supportive of Bill C-3. I believe there's general consensus that this legislation should be moving forward.

I'll address the two key issues that you've raised. First of all, on the issue of the regulation of tolls by the minister, you had provided some suggested wording and made the statement that you felt the minister's hands wouldn't be tied at all. From the wording used on the toll issue, as I recall, you basically brought in the whole act, as opposed to just section 15. In other words, what you're suggesting is that no action would be taken by the Governor in Council that will adversely affect the commercial or financial viability of these facilities. You don't refer specifically to section 15; you refer to the legislation as a whole. And that would tie the minister's hands, not only on the issue of tolls, but when it comes to perhaps increasing security requirements, which have attendant costs, obviously.

If in fact there are going to be any revisions to this particular section, you're probably going to have to go back to the drawing board again and consult with ministerial staff and make sure that in fact the minister's hands are not tied.

Could I have a brief comment on that before I go to the second issue?

Mr. Thomas Garlock: Mr. Fast, I'm a simple bridge manager. Having said that, we refer to "operation" in this language as well, and I think you may be referring a bit to that. The reason we bring that in is that if in the minister's wisdom he or she were to make a decision that all truck traffic on the Niagara River would cross at the Peace Bridge and only passenger traffic would cross at the Lewiston-Queenston Bridge, that would not have a direct impact on tolls per se, but it would have significant impact on revenue, as I'm sure the members understand, because of the differentiation between truck tolls and passenger car tolls: 40% of our traffic may be trucks, but that's more than 60% of our revenue. That would be a change in

operations if the minister stepped in and made the recommendation that the class of traffic over a particular bridge be changed.

Even having said that, if the minister found that he or she had a need to address an existing, demonstrated negative impact on the efficient flow of traffic over the border, that would certainly give the minister the ability to step in and do just that.

Mr. Ed Fast: At the same time, though, the way it's worded right now is quite broad, and I think it does have an element of tying the minister's hands.

The second suggested wording—that would be clause 4—has a similar problem. If you look at the words used, it almost appears to be a requirement that the minister accept existing standards, whether on the U.S. or the Canadian side, as being sufficient to fulfill the intent of the act. Again, that appears to be a tying of hands.

Following up on Mr. Julian's comments, during the process of your consultations with the minister, have you seen any evolution in the language that would bring it a little bit closer to addressing your concerns in both those clauses? Or is this something the minister has been very firm on and has said no, this is the wording we want to keep?

•(1210)

Mr. Thomas Garlock: To answer the first question, Mr. Fast, with all due respect, I think there's a significant difference in the sense that the minister would accept other regulation as opposed to the language we're using—"shall examine" other regulation "for the purpose of"—if it fits. We understand, and it's our intent that if the minister, in his or her wisdom, finds that it doesn't fit, we would expect that new regulations would be promulgated.

On your second question, as I said earlier to Mr. Julian, while the Department of Transport listened with great empathy and I think understands our concern, no, we did not see any appreciable difference in the language as it progressed to Bill C-3.

Mr. Ed Fast: I'm not going to suggest any language to you. Even though I am a lawyer, I'm not a specialist in this area. If anything is going to happen, it's going to be through further consultation with the minister.

The ministerial representative we had in front of us at the last meeting is aware of these concerns. I don't believe he indicated any clear willingness to change it, but I think that further discussions are warranted.

Mr. Thomas Garlock: Mr. Fast, as always, we would be pleased to continue those discussions, but we do have a sense that you and your colleagues have this bill on a rather fast track. I can't emphasize enough that we are looking for statutory change rather than waiting to address it in the regulatory process.

Mr. Ed Fast: Yes, and we understand why.

The Chair: Mr. Hubbard.

Hon. Charles Hubbard: Thank you, Mr. Chair.

For the record, do you publish an annual report of your financial statements?

Mr. Thomas Garlock: Yes.

Hon. Charles Hubbard: And with that, in terms of government financing, they've operated for many, many years without major governmental contributions. Is that correct?

Mr. Thomas Garlock: That is correct, Mr. Hubbard.

Hon. Charles Hubbard: So really, we have all these bridges that are not costing anybody except the users a great deal of money.

Mr. Thomas Garlock: That is true. In fact, I could add for you, Mr. Hubbard, that all of the operators have been very aggressive and diligent in developing non-toll sources of income to further maintain toll rates.

I'll only speak about the Niagara Falls Bridge Commission, but we have not had a toll increase since 1998. In fact, our bond covenants called for an increase in 2001, but we were able to demonstrate to our bond holders that we did not have to do it. We've delayed the increase every year since 2001, at a total savings to our toll payers of approximately \$12 million. I will tell you, it is likely that we will entertain a change in our toll structure within the next year or so.

Hon. Charles Hubbard: It seems that most of your argument and concerns today are with borrowing capacity and the attitudes that borrowers have had.

Some of those bridges have been there a long time. Are you seeing a light at the end of the tunnel in terms of paying off your debts and having maintenance reserves so that you do not need to go for further large borrowing activity?

Mr. Thomas Garlock: In all candour, Mr. Hubbard, that could be the case if we were not liable for the provisions of section 6. The Niagara Falls Bridge Commission is about to rebuild the Queenston Plaza. Right now, we estimate the cost to be \$124 million. Three years ago, when we applied for border infrastructure funds for the fifth lane on the bridge—a wonderful project—we estimated the cost of the plaza to be \$80 million. But there have been delays—for good reason, at the request of the government because of increased security interests, which are clearly understandable—and the cost has ballooned significantly. So rather than a satisfaction of debt, we could be looking at adding more debt.

By their nature, these structures are very, very costly to maintain. If a bridge over a two-lane road in a remote part of the country has difficulty, it's not a serious issue. If the third or fourth-highest volume commercial crossings between Canada and the United States are incapacitated for any reason, that would be an economic catastrophe for Canada. That's why in 2002-03 we spent \$18 million metallizing the Rainbow Bridge, and that's why over the next two years we're spending approximately \$12 million to \$13 million painting and replacing steel on the almost 110-year-old Whirlpool Bridge, and why we've made extensive investment in the Queenston-Lewiston.

• (1215)

Hon. Charles Hubbard: Transport Canada cites four reasons for this act: to confirm the federal government's exclusive jurisdiction; to require governmental approval for the construction or alteration of new and existing bridges and tunnels; to require government approval for all changes in ownership; and to authorize the government to make regulations regarding bridge maintenance—which you do very well, apparently—safety and security, and the operation.

Are you aware of those four objectives?

Mr. Thomas Garlock: I am.

Hon. Charles Hubbard: And the major points you've made today are the two main concerns that your association has with the bill.

Mr. Thomas Garlock: They are.

Hon. Charles Hubbard: If we were to ask you about the International Falls Bridge, which is outside your mandate, which is going to require certain changes in terms of its international views, traffic would be the big concern anyone would have in maintaining, replacing, or taking over that type of bridge. Would that be true?

Mr. Thomas Garlock: I'm not intimately familiar with that crossing, but traffic is generally what drives income. Obviously there's some limitation to how much toll can be supported by a crossing.

If you wanted an entity such as the Niagara Falls Bridge Commission to step in, we would have to look at whether we could derive enough revenue from the crossing to maintain it and replace parts of it that might require replacing—and that is all driven by traffic. In fact, with all of our toll structure and bonding covenants, a traffic analysis is the first thing that happens.

Hon. Charles Hubbard: Thanks, Mr. Chair.

We have a very good organization here that has done a tremendous service to our country. We have to be very careful in what we do that we don't cost our government, our treasury, a great deal of money in the future.

Thank you.

The Chair: Mr. Carrier.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Thank you, Mr. Chair. Good morning, Mr. Garlock.

I would like to come back to subsection 15(b). In order to ensure smooth traffic, the department is trying to optimize traffic flow. In other words, under this subsection, the department could be led to conclude that if tolls were to drop, traffic on the bridge would increase, and therefore improve traffic flow. How would you react to a suggestion to reduce rates?

[*English*]

Mr. Thomas Garlock: In our discussions with the agency, when they have spoken to an instance of reduced tolls they have expressed concern that an operator could conceivably reduce tolls and gain more volume at that crossing at the expense of another crossing. As we've said this morning, these are very expensive crossings to construct and maintain. So in the instance of my good friend Ron Rienas dropping his tolls to next to nothing and attracting a great deal of volume from my bridges, I would be without revenue to repay my obligations, and it could put me in a precarious situation. That kind of predatory activity, as the agency has expressed to us, is the intent of this language.

In fact, the agency has said to us informally—and of course this would have to be worked out in making regulations—that they are not necessarily envisioning a case where the Niagara Falls Bridge Commission would have to submit a toll structure to the minister for approval. Rather, the minister would only step in if the minister saw something that undermined the efficiency of the border. I'm not speaking for the agency, but that's some of the discussion we have had. But it is that predatory practice that the minister has an interest in.

• (1220)

[*Translation*]

Mr. Robert Carrier: You talked about amending this clause. Is your amendment intended to protect the profitability of bridge administration? Earlier you spoke very quickly about your amendment. Will you be submitting it so that we can become familiar with it?

[*English*]

Mr. Thomas Garlock: Absolutely. We have provided it to the clerk of the committee, and we would be happy to continue discussions with members concerning it.

I think it's important for me to say that I don't think there's a significant difference between what the minister and the agency seek to accomplish, and the purpose of the bridge and tunnel operators. We all want an efficient border.

Some of the members may be concerned that I'm a bit oversensitive on the whole financial markets issue, but again, the letters we have placed with the clerk from bond counsel, financial advisers, and Standard & Poor's will more clearly outline why that sensitivity has come to the fore.

[*Translation*]

Mr. Robert Carrier: Sections 13 and 14 deal with maintenance and repair. Following an inspection carried out by the department, the government can recommend or ask you to make potentially very expensive repairs, which could force you to increase your tolls. Once again, is your problem unsolvable? Would you like to see clauses dealing with financial considerations added to the bill?

[*English*]

Mr. Thomas Garlock: I don't believe we do have a problem with that clause. As I said earlier, these are important links for Canada. They are important economic links, and I think if the minister sees a situation that could undermine the safety of a crossing, it is within the government's purview to step in and say this has to be taken care of.

In terms of finances, we did have some discussion with the Department of Transport along these lines. I'll give you just a brief overview. As I have been operating three bridges, and Ron has been operating a bridge between two wonderful communities, Fort Erie and Buffalo, New York, we have been able to be self-sufficient. Some of the members of the Bridge and Tunnel Operators Association, though, don't deal with the volume that we do. So looking at a security standard and looking at the Niagara Falls Bridge Commission with more than 150 cameras on top of the bridges, under the bridges, in the plazas, with motion detection down in the gorge, with controlled access for all 90-some doors around the

commission—a \$3.5 million system—we're very proud of what we've done in security, both in hardware and in our practices.

The international bridge at the Sault, however, does not have the resources to do that. I think if it became an interest of the government to emulate the strongest standard and to require, say, a similar security system to what I would have or Ron would have at the Ogdensburg Bridge or even at the Federal Bridge Corporation Seaway International Bridge, then the federal government might have to look at some financial assistance.

Those are discussions that we have had, but we're not here proposing that a financial component be included in the bill.

• (1225)

The Chair: Thank you.

Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair.

Just continuing on with Mr. Carrier's questions about the finances, for the quasi-public authorities—not for the Ambassador Bridge, obviously—is it safe to assume that maintenance costs are basically covered through the user fees and that capital costs are paid for through financial markets, through bond issues, etc.? In other words, there are very few subsidies or grants that go to these bridge entities?

Mr. Thomas Garlock: The answer to your latter question is yes. But on the former, money required for maintenance of the spans comes from operating revenues, but I can tell you that all of my toll revenue is first pledged to the bond holders. The bond holders get paid before I do. The bond holders get paid before the bridge is painted. The bond holders get paid before we build facilities for Canada Border Services Agency.

What I use to underwrite general maintenance and our payrolls, our IT department, and all of the things that are required to operate three international crossings is in large part our non-toll income. We receive more than \$4 million a year from the Government of the United States of America for the lease of the facilities for customs and border protection, USDA, and what have you. There is normally an agreement between the owner of the bridge or tunnel and the operators of the duty-free shops, whereby the bridge owners get a percentage of their sales. We have a private currency exchange operator on our bridges, and we get a percentage of that.

The third part of it is that we have built significant reserves in the past ten years as we have been getting ready for significant capital improvement. Those reserves have also thrown off some interest income, but we're about to deplete that, so you're right—then we go into the financial markets to float additional bonds for any additional capital construction that we need to accomplish.

Mr. Peter Julian: That would be the case for all ten members of the public authority?

And I have a supplementary question to that: What are the current financial ratings? You said you have an A rating. What are the current financial ratings of the other operators?

Mr. Thomas Garlock: To the first question, I'm not certain that the international bridge over the Saint Lawrence River would finance in the same way as we do. In Canada, they're part of the Federal Bridge Corporation—I'm not certain of it—but I think it would be safe to say that the majority of us do indeed access the bond markets for work.

In the United States, I think I mentioned earlier that these bonds are floated on a tax-exempt basis. They're very attractive for the purchasers, and as you can appreciate, that really drives down our borrowing cost.

Mr. Peter Julian: Would most of the bond holders be American? Is that fair to say?

Mr. Thomas Garlock: They could be Canadian. Of course, in that category, Canadians would not derive the tax benefit, but they could purchase the bonds, if they found them attractive. Probably most of my bonds are held by Americans.

In the matter of the Blue Water Bridge Authority, I know that their bonds were issued in Canada.

In terms of rating, I can't tell you that everyone is the same because, as I indicated earlier, there are smaller and larger entities, and they are all over the map in terms of their financial strength. Our bond rating is an A, and the Buffalo and Fort Erie Public Bridge Authority's rating is an A minus, which are very attractive ratings from the agencies.

Mr. Peter Julian: Okay.

For our committee's information, you mentioned in your case going from a triple B in 1993 to a single A in 2003. What's the financial impact of having that rise in rating? Then what are your concerns about what might happen if the same bond agencies decide that if there are no changes made to the legislation, they have more concerns about issuing the bonds and may not give you the same rating?

Mr. Thomas Garlock: This is an easy answer. In 1993 we borrowed \$130 million on a triple-B rating. In 2003 we refinanced with an A and saved \$20 million. That difference was all in the rating and in what we paid the bondholders. It is significant. Just the movement between an A and an A minus or to a B is dramatic.

As I said earlier, there's only one place we can go to recoup our costs if they escalate significantly, and that is to our toll payers—that is to Canadians, Americans, and visitors to the two countries.

Again, I need to emphasize that this is discussed further in some of the materials I made available to the clerk.

Mr. Peter Julian: Thank you.

•(1230)

The Chair: Mr. Blaney.

[Translation]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you, Mr. Chair.

I believe that you gave a good explanation of your concerns regarding the potential financial implications of having Transport Canada impose restrictions on the tolls that you collect when people use your bridges and tunnels.

You talked about a second point, which is perhaps less important for you, that of operating and maintaining your infrastructure. You seem to be saying that bridges located in Ontario are already covered by an array of legislation. If your bridges had to be repaired, would these laws force you to make the repairs?

[English]

Mr. Thomas Garlock: I believe the answer to your question is yes. I would agree with that, Mr. Blaney, but your earlier statement is accurate as well. Ontario has very stringent standards, as does New York, as does Michigan, to ensure the safety of these spans.

As I noted earlier, we take it a step further. I believe Transport Canada already asks us to provide inspection reports of the spans every other year. We send them every year. Most—in fact, almost all—of the bridge and tunnel operators do their inspections on an annual basis. Again, it's reflective of our understanding of the importance of these crossings to both countries.

For another thing, we are unique, and part of the benefit of all these public benefit corporations operating the crossings.... Take, for example, the Ministry of Transportation for the Province of Ontario. They have thousands of spans to look after across the province. We have the luxury at the Niagara Falls Bridge Commission of only looking after three.

If I could, I would tell you that I think the Minister of Transportation for the province holds us in some regard, in that, through the BIF program in 2003 there was an allocation to the province for provincial Highway 405. For only the second time in the province's history, the MTO designated an agent to do the Highway 405 project for them. It was a \$14.4 million project. The Niagara Falls Bridge Commission, with no material interest in a provincial highway, was named the agent.

We took it from the moment of design and engineering to substantial completion in 13 months. That is because we were able to concentrate on the project. We are able to concentrate on our spans. I feel that you would find the majority of our spans in superior condition relative to non-border spans in the same regions.

[Translation]

Mr. Steven Blaney: You want to make sure that there is no duplication of laws that would entail a double inspection. As you say, we don't need to reinvent the wheel. The purpose of the legislation is to ensure that all standing infrastructure is in good condition and properly inspected. I believe that there is already a regulatory framework. Does the United States also have a regulatory framework for the inspection of infrastructure? If there are problems, are administrations obliged to make investments in bridge maintenance?

•(1235)

[English]

Mr. Thomas Garlock: That would be correct. As they should, they will invest if there is a problem.

As far as the approach is concerned, there are very specific regimens that are followed by the inspectors, specific things according to the type of span or the tunnel that the inspectors have to examine and report upon. It's a very detailed inspection. I know at our crossing it takes upwards of two to three weeks to inspect all three spans.

Ron, I believe your inspection goes at least more than a week, and two weeks at the Peace Bridge.

In fact, Mr. Blaney and all members, if you have an interest, please contact us. We would love to have you down during an inspection period. You haven't lived until you're in the bucket of a C-arm that is underneath the Rainbow Bridge, 270 feet above the river. We do look at everything in some detail.

Please don't misunderstand me. If the minister, in his or her wisdom, believes there is something more that has to occur that the provinces, the states, or the various security interests have not addressed and the minister feels that he or she must step in, we have no quarrel with that whatsoever.

[Translation]

Mr. Steven Blaney: Are these reports provided to Transport Canada? Do you share information on the inspections?

[English]

Mr. Thomas Garlock: Yes, the inspection reports are provided to Transport Canada, and they do regularly contact us with specific questions about the report. There are almost always deficiencies. I'm proud to tell you there are none on the Queenston-Lewiston Bridge because you just helped us update that bridge significantly, but on the Rainbow and the Whirlpool Bridges there will be deficiencies, so we will have conversations with Transport Canada about what we're doing to cure those deficiencies.

I should caution you, though, they are always minor in nature. If it's anything significant, obviously we would get to it before the inspection even occurred.

The Chair: Ms. Stronach.

Hon. Belinda Stronach (Newmarket—Aurora, Lib.): Thank you.

On clause 15, to begin with, I would support looking at that clause. And I agree that it would be a mistake if we put forward legislation that would significantly impair your ability to raise capital funds, which ideally would bring down costs. At the end of the day, we want to make sure that the operation you run is efficient; otherwise, the costs are passed on to the users and ultimately to the government and Canadians. So I think to look at wording that would give greater stability to that process is something I would support.

What I would like to understand is how does the U.S. govern the toll-setting process for their bridge operators?

Mr. Thomas Garlock: Ms. Stronach, that is set by our enabling legislation. In the instance of the Niagara Falls Bridge Commission, we were a creation of the United States Congress in 1938, and if you'd indulge me for just a moment, this comes from the original 1938 legislation:

In fixing the rates of toll to be charged for the use of such bridge, the same shall be so adjusted as to provide a fund sufficient to pay for the reasonable cost of

maintaining, repairing, and operating the bridge and its approaches under economical management and to provide a sinking fund sufficient to pay the principal and interest of such bonds as the same shall fall due and the redemption or repurchase price of all or any thereof redeemed or repurchased before maturity is herein provided. All tolls and other revenues from said bridge are hereby pledged to such uses and to the application thereof hereinafter in this section required.

It does go on in some detail, but what I'm trying to demonstrate is that there is very specific direction to us to only collect that toll that is necessary for our core responsibility. I think that you'll find similar legislation in most of the quasi-public entities. I know that at the Buffalo and Fort Erie Public Bridge Authority, they have very similar language in the legislation.

Hon. Belinda Stronach: The equivalent of the Minister of Transport and the secretary responsible, are they able to exercise the same kind of jurisdiction as is proposed in the legislation to override?

• (1240)

Mr. Thomas Garlock: It is the case in the Buffalo and Fort Erie Public Bridge Authority; it is not the case in the Niagara Falls Bridge Commission.

Hon. Belinda Stronach: All right.

Just on the second point, clause 4, in a broad way it addresses, again, efficiency and harmonization between the various levels of government. I think this is something we must look towards as we go forward—greater efficiency, greater productivity—so if it can be improved without impairing the minister's ability, at the end of the day, to respect the intent of the act, I think it should be looked at.

Is there a body that acts as let's say a bilateral border commission that brings together the federal, state, and provincial levels of government, and an organization such as yours, to look at these kinds of issues towards greater efficiency, reducing costs, and greater competitiveness?

Mr. Thomas Garlock: Not to my knowledge. Perhaps the only binational body that I'm aware of that is devoted to that activity is the Bridge and Tunnel Operators Association. I can tell you and your colleagues that we compare notes regularly, we share information on best practices. Many times, the larger operators such as Ron's or mine will share information with the smaller crossings that don't have the wherewithal that we have.

Case in point: in the wake of the events of September of 2001, we immediately commissioned a full-threat analysis of our spans with Globe Risk Holdings, out of Toronto, and in turn shared that with our colleagues. We look at the efficient movement of traffic over the border. I could not have done the fifth-lane project, a \$45-million project, last year if the Buffalo and Fort Erie Public Bridge Authority had not delayed some very important joint work. We wanted to make sure the Niagara River crossings operated very efficiently, particularly for commercial purposes, while that major construction was going on. Now, I've delayed activation of our fast lane for free and secure trade until mid-June, while Ron is taking care of the joint work at the Peace Bridge.

So if we're looking for a forum where there's cooperation and there's information-sharing, it's a little bit informal, but I think that the Bridge and Tunnel Operators Association has done exemplary work in that area.

Hon. Belinda Stronach: I commend you for that.

I guess what I'm asking is, would it be a useful exercise to recommend such an entity to look at how we bring about greater harmonization and efficiency to promote a more efficient flow of goods and services between our two nations?

Mr. Thomas Garlock: I am aware that Transport Canada consults regularly with its counterparts in the United States on border issues. This has increased significantly in the last five years. I know that Transport Canada deals with federal highways and the U.S. DOT. It may not be a formalized approach, as you may have described, but I think that the consultation, examination, consideration of approach is indeed going on.

The Chair: Mr. Storseth.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you, Mr. Chair, and thank you, Mr. Garlock, for coming today.

I guess I want to dive in a little bit about the importance of these organizations to both countries. I also understand that your organization represents ten of the organizations operating eleven of the major bridges.

Do these organizations consult with each other voluntarily in the operation and use in order to improve efficiency on some of these things?

Mr. Thomas Garlock: Regularly, Mr. Storseth.

As I say, consultation usually happens with bridges that are in close proximity to one another. I know that the crossings between Ontario and Michigan speak regularly. I tell you that the personnel from the Buffalo and Fort Erie Public Bridge Authority and the Niagara Falls Bridge Commission speak daily. In fact, we operate an operations centre that is up and running 24 hours a day, seven days a week that reports border conditions on the Niagara River, not only for the Niagara Falls Bridge Commission but the Peace Bridge as well. When you're in our area, please dial 1-800-715-6722 and we'll make certain you're directed to the bridge with the least congestion.

I'm not worried about losing \$3.50 to Ron, and Ron is not concerned about losing \$13 for a truck toll to me. We understand very clearly what our mission is: it is to manage the Niagara River crossings to the benefit of Canada and the United States and to move people and commerce safely and efficiently. And I think that you see a lot of that among BTOA members.

• (1245)

Mr. Brian Storseth: Going a bit further into that, we talked a little bit earlier about the class of traffic and manoeuvring different types of traffic. Would you guys look at that voluntarily as well, among yourselves, to ensure financial liability for all crossings?

Mr. Thomas Garlock: We do that in terms of managing wide loads and heavy loads. There are some loads that I will permit but Queenston-Lewiston does not accept, and vice versa. We coordinate that so that commerce will be able to flow over one bridge or the other.

I'm not sure if this is your question or not, but in terms of establishing some areas for commercial, some areas for passenger, I think this really cropped up historically. Carriers don't use the Queenston-Lewiston Bridge because of toll or because there's a Tim

Hortons on the Lewiston side. It has more to do with where they're coming from and where they're going. In Ron's instance, you see a lot of traffic between the General Motors plant in St. Catharines and the engine plant on River Road in Tonawanda, New York. There would be no interest on the part of that traffic to take the Queenston-Lewiston Bridge. Conversely, we've become an agricultural crossing of choice at Queenston-Lewiston for both plant and animal material.

I think historically, over many years, different economic sectors and different users have gravitated to different crossings because it suits their purposes, not ours, and that is as it should be.

Mr. Brian Storseth: When you look at this legislation, then, do you think this legislation will create greater cooperation within the authorities themselves, or is it pretty much there already?

Mr. Thomas Garlock: I'm not going to portray this as a BTOA position, but I will tell you that it is my personal opinion that this is, indeed, necessary legislation to clarify orders of federal interest and importance. It could conceivably encourage greater communication and cooperation, but I'd be remiss if I didn't tell you that this already exists between the operators and Transport Canada. I think that the agency has been very responsive to the crossing operators, and that goes back to before the days of September of 2001. But the cooperation has grown even closer and more frequent in the last five years.

Mr. Brian Storseth: Thank you.

The Chair: Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): Thank you very much.

Welcome.

I'd like to inquire about the policy development process. You mentioned in your opening remarks that others from within the organization might discuss other parts of this. For the purposes of narrowing our analysis, what did you mean?

What I'm trying to get at is, to what extent can the discussion that we're going to have around this legislation be characterized by what you've presented today, and to what extent would you anticipate that other members of your organization, were they here, might speak of other things? How broad is that?

Mr. Thomas Garlock: Mr. Scott, the two issues I brought to your attention this morning were issues of consensus among the BTOA members. It is simply a statement of fact that nine of us are quasi-public-benefit corporations and one is privately held. It's expected that the privately held operator may have some additional issues to take up with you regarding the legislation.

You will also find in the materials I have left with the clerk a letter from the bond counsel for the Thousand Islands Bridge Authority. That counsel suggests that it doesn't think any further regulation might be necessary. I will tell you that personally I would not agree with that statement.

There may be a bit of disparity and opinion between the members, but on the two points I have spoken to this morning, I believe there is broad consensus.

•(1250)

Hon. Andy Scott: So the space between what is necessary to give the minister the power to take the actions they are wishing to secure in this legislation and what is necessary for you to satisfy the people who are looking at your revenue flow in terms of you being able to float bonds is narrowing. That's probably where you would suggest that we place most of our attention. And as Ms. Stronach has said, we would wish to accommodate it—not at the expense of the ultimate outcome, but to accommodate as best we can.

According to your comments, I understand this is the sort of discussion that has taken place. Is that taking place to your satisfaction?

Mr. Thomas Garlock: I believe it is. I think I've heard a clear understanding of our issue from the members this morning, and I'm optimistic that it will be addressed.

I think your observation, Mr. Scott, is right on point. That is the key, the critical issue for us. We don't want to diminish the minister's authority to step in during a serious situation, but we don't want the unintended consequence when that might not be necessary, that the language in law would have a chilling effect on the rating agencies and potential bond purchasers.

Hon. Andy Scott: As we are trying to outline the relative roles here, to bring more certainty and stability to this in terms of everyone's interests, to what extent is your organization engaged with municipalities? It isn't necessarily for you to answer for the consultation process as it relates to municipalities, but to what extent can you offer an opinion as to how engaged they have been?

Mr. Thomas Garlock: I think they've been terrifically engaged, keeping in mind that the members of our respective boards and commissions are appointed largely from the communities.

In my case, I have a Canadian commissioner from Niagara Falls; another from St. Catharines, very close by, and another from Niagara-on-the-Lake, to the north of Niagara Falls. All are intimately aware of the issues of importance to their respective communities.

This is mirrored on the United States side. In my nearly six-year tenure as general manager, I've been given clear direction to be engaged with communities on both sides of the river and to make sure that we understand, appreciate, and respond to local concerns.

I'm very proud that I've recently completed the chairmanship of the board of directors of the Chamber of Commerce of Niagara Falls, Canada—you can detect by the strange way I speak that I may be an American. We are truly binational in our part of the world, and our commission operates that way.

Hon. Andy Scott: As a maritimer, it all sounds the same to us.

I think I heard you say in your opening comments that notwithstanding that everyone on the Canadian side comes from some place—it's a given—they are appointed by the province. Would the municipalities involved have the same comfort that the people coming from St. Catharines would hold the view that would satisfy the Municipality of St. Catharines? I'm trying to get to the question of relative roles here.

Mr. Thomas Garlock: All I can tell you is that I have not heard any complaints from the community about the activities of the

commission or the representation of the community on the commission.

I can tell you that our complaints are minimal. I think I did say earlier that we are starting to hear from some people about the disparity between the two currencies, and we are going to have to address that. But by and large, I believe that communities on both sides of the river feel that they are well served.

Hon. Andy Scott: What is your relationship with the other entities that are represented, outside the areas that you cover, elsewhere in Canada?

Mr. Thomas Garlock: I've not really had contact with the eastern bridges. Mostly they're operated by the provinces and the states. You don't have a stand-alone operator such as the Peace Bridge Authority or the Niagara Falls Bridge Commission there, so it's been almost non-existent, in all honesty.

•(1255)

The Chair: Thank you very much.

Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair.

I see we're almost out of time, so I'll try to be very quick. I know I won't have very much to add after all the opportunities of the other members; however, the 65% of the people who voted for me in northeastern Alberta are glad that I can participate today.

On my first question, you referred to the May 12, 2006 Standard & Poor's article?

Mr. Thomas Garlock: Yes, the advisory that they issued.

Mr. Brian Jean: That advisory is actually titled "Canada's Bill C-3 Unlikely to Affect Blue Water Bridge Authority Credit Profile".

Mr. Thomas Garlock: That is correct, Mr. Jean.

Mr. Brian Jean: In fact, the first paragraph actually says, "Standard & Poor's Ratings Services today said that neither its 'AA-' ratings nor its stable outlook on Sarnia, Ont.-based Blue Water Bridge Authority...are affected as a result of Bill C-3...".

Mr. Thomas Garlock: It does say that.

Mr. Brian Jean: It actually goes on further to say that the BWBA's current toll-setting autonomy is one of the authority's most important credit-supporting features, and that the draft legislation as currently published would not actually impose any constraints on the BWBA's toll-setting autonomy but simply specify that the government had the power to do so.

In fact, isn't this legislation really putting it in the hands of the minister, where it would be the challenge of the bridge authorities or the bridge independent owners to challenge the government's or the minister's position on toll-setting? Isn't that fair to say?

Mr. Thomas Garlock: It's not entirely clear yet, and I think it will be clarified in the rule-making, in the regulatory process.

I should add, too, Mr. Jean, that if you read further in the advisory from Standard & Poor's you'll see there are some caveats that speak to potential future issues from the Blue Water Bridge Authority. We've also included a discussion contained in an e-mail from an officer of Standard & Poor's about the legislation, and that has also been made available to the clerk.

On the face of it, it would likely not have immediate impact on present bond holders. I, however, am an exception. I do have a number of swaps in place on our 2003 refinance that may or may not be influenced by the legislation.

But for the most part, for existing bonds that are already in the hands of issuers there would be no downgrading in the bond unless the government took action. But with a future issuance, the markets could view this as being somewhat chilling and it could have an effect on the rating, and thereby the cost to borrow.

Mr. Brian Jean: But you'd agree with me that Standard & Poor's actually says in this particular article that it wouldn't have an effect on the rating?

Mr. Thomas Garlock: On the existing rating, I would agree.

Mr. Brian Jean: And indeed, wouldn't you still have the ability to seek damages and even an injunction from the court if such were to take place? If there were an imposition by the minister, which seems unlikely in the circumstances, but if he were to impose some sort of tariff restriction, either up or down, the authority would have immediate redress to go to the court to seek an injunction, because they could show that it actually harmed them in some capacity.

Mr. Thomas Garlock: Mr. Jean, this simple bridge manager has no interest in tangling with the minister.

Mr. Brian Jean: You would if it affected your bond rating, I'm certain.

Mr. Thomas Garlock: Well, I'm optimistic that we can address that in this forum, in Parliament, before it would ever come to that.

Again, it goes back to our conversations with the Department of Transport. They were not insensitive to what we were saying. I think it's a divergence of opinion, in terms of where it should be addressed. Should it be addressed here by Parliament, or should it be addressed by the minister in rule-making?

We feel strongly that it should be a policy statement and part of Parliament within the statute. That would give us and our rating agencies and our bond holders a measure of comfort.

The Chair: Mr. Jean, you have 20 seconds.

Mr. Brian Jean: Wouldn't you agree, though, this is a situation that can't continue as it is because the minister has no authority to indeed regulate the flow of traffic without this legislation, and this would put the bridge authorities and the bridge owners on reaction instead of, in essence, the ability to do whatever they want?

Of course you have mentioned that the flow of traffic across those borders is so important to Canada, which of course it is.

Mr. Thomas Garlock: I'm not going to portray this as a BTOA position, but I personally would agree with you that we fulfill a

federal purpose and that it is appropriate for the ministry to have an oversight role.

• (1300)

Mr. Brian Jean: Thank you.

The Chair: I'd like to thank you, Mr. Garlock, for attending today, and we'll take your words under advice as a committee.

Mr. Thomas Garlock: Thank you, Mr. Chairman and all the members. I'm most appreciative of the time you've given us this morning.

The Chair: Thank you.

To the committee, we have a couple of things we have to deal with for the next meeting. I want to make sure we're all on the same page.

I know we have the motion. It's actually completely filled out the way Mr. Jean presented it, with the extension of the comment where it suggests that the opposition parties, at the end, have the first right of refusal on the questions. I'll pass that around to you for the next meeting. Fair enough?

When will we meet again? As you know, the House has been asked to sit from 9 a.m. until noon on Thursday, with question period from 11:15 to noon, due to the arrival of the Prime Minister of Australia.

Mr. Jean.

Mr. Brian Jean: My suggestion is that this is an important issue, and I don't see any reason why not. We work for the taxpayers here, and it would be nice to be able to meet sometime on Thursday to deal with this issue, because it is one that is obviously of some concern to some of the members.

The Chair: Are there any comments?

Mr. Julian.

Mr. Peter Julian: That would mean in the afternoon, obviously, to satisfy the 48-hour notice-of-motion requirement. Do we have witnesses who have accepted to come on Thursday?

The Chair: That's my second point. I thought we should try to deal with the date first, because to date we've had some interest shown but no one actually ready to appear. I do know we are coming into a break week. We're having the minister on June 1, and the question I want to ask the committee is how long we're prepared to wait for witnesses to come forward before we proceed clause by clause.

Mr. Julian.

Mr. Peter Julian: If we don't have witnesses, I do not believe we should go to all the expense of translation for this one motion. It can be treated at our next standing committee meeting. I don't believe we should be meeting just for this notice of motion.

The Chair: Mr. Bell.

Mr. Don Bell: The clerk received a letter—I have a copy of it—from Dan Stamper of the Canadian Transit Company. My understanding, having called his office, is that he would be available this Thursday, if we have the break week. So that's one witness we could get on this Bill C-3 and deal with that.

If we're able, I don't think we should wait until the afternoon to meet. If we agree, if we're going to have a meeting, we could deal with the other issue as well at the same time.

The Chair: Okay.

Mr. Brian Jean: But 48 hours is necessary, as Mr. Julian pointed out. It would have to be at 1:15, at the very earliest, going by the letter of the law.

Mr. Don Bell: Unless, I guess, we agreed to waive that or have a meeting in the afternoon.

The Chair: Mr. Julian.

Mr. Peter Julian: No. Forget about unanimous agreement on that.

The Chair: May I suggest, then, that we look at holding a meeting on Thursday afternoon at 1:30, for one hour with the

witness and whatever time is required to deal with this motion? Agreed?

So it will be at 1:30, and we'll advise the witness to come forward.

I think that's all I have. I thank everybody for their attendance and participation.

Mr. Brian Jean: Is there any difficulty for any of the members concerning the form in which this particular motion is presented? I would like to get it on the record if there's any difficulty at this stage.

The Chair: I think we'll ask....

Mr. Brian Jean: Is there any difficulty with the form of the motion presented today?

I just want to make sure that there are no other problems on Thursday, as Mr. Julian....

The Chair: With that, I will adjourn the meeting.

Thank you.

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