



House of Commons
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 026 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, November 21, 2006

—
Chair

Mr. Merv Tweed

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Transport, Infrastructure and Communities

Tuesday, November 21, 2006

•(1535)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Good afternoon, everyone, and welcome to meeting number 26 of the Standing Committee on Transport, Infrastructure and Communities. Today we're following the orders of the day, pursuant to the order of reference of Thursday, September 21, 2006, Bill C-11, An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts.

Joining us today are Helena Borges, director general, surface transportation policy; Brigita Gravitis-Beck, director general, air policy; and Alain Langlois, legal counsel. As everyone should know or will know, they're here to offer us advice on some of the amendments that we'll be reviewing today.

I want to make a couple of comments. We do have some amendments. I should thank the people who submitted their amendments last week so that the department could look at them, so the legal counsel could look at them. I will have some comments on them as we go through the process, reflecting the advice I've been given on those issues. As we go through them, we'll certainly try to address them individually with the staff that's here today.

With the committee's indulgence, I'm looking for agreement on something. If it's there, fine, and if it isn't.... One of the things I've asked the Transport people in general to look at is the clauses that are currently in the bill for which there are no amendments or that are not impacted by any of the amendments that are coming forward. I'm looking for direction, to see if there might be a willingness to move through it in that order and deal with the clauses that we know we can move through quickly, and then spend more time discussing and debating the amendments. We'll go over them line by line, if there are any questions. If there hasn't been an amendment put forward for a clause, then it would be something that we could pass, and then we could move into the more difficult amendments that have repercussions throughout the rest of the bill.

I ask for the committee's indulgence, if there's a willingness to do that. If not, we can proceed line by line.

Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): The only question I have—and this may be purely academic—is what if there was an amendment defeated in a clause that would have a bearing on one to which there were no amendments? If it were defeated but would have a bearing later, could we reserve the right, if we passed all of the uncontested clauses, to have an opportunity later to say that one doesn't pass because it bears on something. As long as you would

recognize that possibility.... In other words, there are clauses here that may not have amendments, but a failure of an amendment someplace else may have a bearing later on them.

The Chair: Yes, absolutely.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I actually had exactly the same concern, Mr. Scott, in relation to that, and I put together a list of clauses that required no changes—actually, the department put it together—and of course there is one change to that. I think it was clause 27, on which Mr. McGuinty brought forward an amendment today, or found one.

I have a list of those clauses, which I could circulate within the committee, Mr. Chair, if that would be your wish, and certainly I could read it into the record. Some of the clauses require minor changes. Some of them require more modest changes, and some will be contentious. The list is, in essence, divided into those categories so we could get to the meat and potatoes at some time.

The Chair: Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): I have reservations about that suggestion, because, after all, there is a certain logical sequence in the bill. It does not seem to me a good idea to try and adopt particular clauses quickly because they have not been amended. The way we are proceeding helps us to follow the thread of the bill, and I wouldn't want to lose that. I don't think it requires a greater investment of time. We have to spend the same amount of time on each of the amendments anyway; we have to examine them one by one and adopt them; we have to say yes, etc. Let's examine them as we go along then. That way we won't lose the thread of the text; we'll follow the bill step by step, which will give us a better understanding. I hesitate to adopt clauses selectively, as is proposed, in case there are minor changes to make subsequently. Therefore, I am opposed to that proposal.

•(1540)

[English]

The Chair: Mr. Julian.

[Translation]

Mr. Peter Julian (Burnaby—New Westminster, NDP): I share Mr. Laframboise's opinion, because it is a fairly complicated bill, after all, and if we go from one clause to another and come back to a clause later, it's more difficult for us to grasp all the points made and to determine what should be changed. I also understand your concern, Mr. Chair, that we manage to get the work done within the three or four days we planned to spend, but I think it makes more sense to go from one clause to the next. Of course we will have more discussion, but this Thursday and next Tuesday, the pace should pick up. I don't think anyone here wants to prevent the bill from passing. We are all working in good faith to improve it.

[English]

The Chair: Again, I was putting that out there for the will of the committee. I suspect that some of the later amendments, simply because of time, haven't had a chance to be reviewed by legal counsel. If anything, it would be buying time for them to actually form an opinion.

Mr. Jean.

Mr. Brian Jean: Indeed, that is the case, and I would agree with Mr. Julian and Mr. Laframboise. That's why I think we need the proviso that we have the ability to go back at any time to deal with any other section or paragraph. We might need to do so. The difficulty is, of course, that the department received some of the amendments only yesterday. As such, we haven't had a good chance to go through and look at the ramifications of them.

The will of the committee is the will of the committee. I just think it might be simpler to go through and at least deal with them on the basis that there's no contention with the issue, and to recognize that, and then, at the end of the day, if we want to go back and make changes to them or leave them open, that's totally the will of the committee. But to go through them line by line and adopt them and then find later on that we have some problems with a particular issue because of whatever reason Mr. Scott brought forward, that it might not pass, or as the case may be...we could take an analysis of that and go backwards and deal with it.

I just thought it would be simpler, and then we would at least deal with the contentious issues by themselves.

The Chair: Mr. Julian.

Mr. Peter Julian: Might I suggest that we put clauses aside where there has been a more recent amendment and simply stand them? And there's a particularly difficult issue around railway noise. That may take a few days to work through, so I'm going to propose that we stand on that as well. We end up accomplishing the same thing by working relatively quickly through clauses that are less contentious, standing aside the clauses that require further work, and then coming back to them Thursday or next week.

We're doing what the chair proposed, but just in a way that makes sense sequentially. We're not going back and forth into different parts of the bill.

The Chair: Mr. Jean, very briefly.

Mr. Brian Jean: Very briefly, I would agree with Mr. Julian. As long as there's flexibility one way, why not have it the other way? If indeed there is a clause on which we haven't had a thorough study or

on which the department wants to put some of their spin, we can go back and do that. As long as we have the flexibility to do that, I think that's very fair.

The Chair: Thank you.

What we'll do is proceed, and when we run into those difficult clauses, we'll remember the words of wisdom that we've just heard.

On Bill C-11, we're going to start with clause 1. There are no amendments put forward on clause 1.

(Clause 1 agreed to)

The Chair: That first one didn't hurt at all.

Mr. Jeff Watson (Essex, CPC): It's all downhill from here.

(On clause 2)

The Chair: We're into clause 2, and we do have several amendments.

I have actually been asked just to advise the committee—and I know, Mr. Julian, that you have the first amendment—that the advice the chair has received is that there is a line conflict with the amendments. The fact is that if amendment NDP-1 is adopted—it is the first one—the second amendment by the NDP cannot be proceeded with.

The only option we have—and I would put this out to Mr. Julian, if he is interested at all—is for lines 1, 2 and 3 to be grouped together for a committee debate, and then we would basically come out with the best result we can.

● (1545)

Mr. Peter Julian: Mr. Chair, are you suggesting that our amendments 1, 2, and 3 be grouped?

The Chair: I'm suggesting that NDP amendments 1, 2, and 3 be grouped. If amendment NDP-1 is adopted, then NDP-2 cannot proceed. Because of their similarities, what I'm understanding is that if we were to group them together, perhaps we could come up with an amendment that may be agreeable to the entire committee.

Mr. Peter Julian: Yes, I'm agreeable to the idea that we regroup them, Mr. Chair.

In fact, our amendments up until NDP-4 could be regrouped. Essentially, what we have is a series of modifications from the government, from us, and from the Liberals.

The Chair: I've been advised that if we have a general discussion on NDP-1, -2 and -3 because they are all impacted, and if we did come to a clear amendment at the end, it would have to come forward as a motion, just more for the technical side of it.

If you would like to take the lead on your motions, Mr. Julian, there are three of them.

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

Essentially, what we're endeavouring to do by these motions of amendment to clause 2 is broaden the definition that is contained within the act itself. If we look at how the act is defined now—and please excuse me if I go back and forth on this, with the three pages—what we currently have is the emphasis on a competitive, economical, and efficient transportation system. What we're looking to do is broaden the accessibility and broaden the definition of how our transportation system would respect the environment and have the highest practicable safety and security standards.

It's a way of redefining the approach of our national transportation policy that I don't think anyone at this table would disagree with. I do think it's important that we be very specific when we put forward what is essentially a preamble of intention in terms of policy. It is important that we cover the bases in a way that we would all define that policy, and we're putting forward these motions in a way that defines more specifically what the national transportation policy should do.

The Chair: Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: I think, if we group them together, the French version of clause 2 of Bill C-11 would be "*Il est déclaré qu'un système de transport*" and we would add the word "*national*" before the word "*compétitif*" which would make it: "*un système de transport national compétitif*"—I am not against that—"rentable et bien adapté . . .". Then the words "*qui est sûr*" would be replaced by these words: "*et qui rencontre les plus hautes normes possibles de sécurité . . .*". I think that would be better than the words "*qui est sûr . . .*". That is what Mr. Julian's amendment NPD-2 proposes.

As his amendment NPD-3 proposes, the words "*respecte l'environnement*" would be replaced by "*favorise un environnement durable et utilise tous les modes de transport au mieux*". That improves the text. I have no objection to grouping those three amendments together.

So, in French, we put the word "*national*" after the word "*transport*" and before the word "*compétitif*" that is, "*transport national compétitif, rentable et qui rencontre les plus hautes normes possibles de sécurité*" rather than "*qui est sûr*." Then the words "*qui respecte l'environnement*" would be replaced by "*qui favorise un environnement durable et utilise tous les . . .*". I would agree to grouping those three amendments together, as proposed by Mr. Julian.

[English]

The Chair: Are there any comments?

Just to move things along, Mr. Julian, I'm wondering if I could ask you to take the first amendment as you and Mr. Laframboise have referred to it, and perhaps edit it with the second and third amendments. We can then read the new version into the record. But it has to come forward as a motion on the amendment.

• (1550)

[Translation]

Mr. Peter Julian: Okay, Mr. Chair. So, that would be done in the French version. I support Mr. Laframboise.

[English]

The Chair: If I may, the rules state that it actually has to come from somebody other than you, because it's an amendment to your motion. Maybe I'll ask Mr. Laframboise to come to the terminology.

[Translation]

Mr. Mario Laframboise: I make the motion.

[English]

The Chair: Can you read the motion again, Mr. Laframboise?

[Translation]

Mr. Mario Laframboise: Yes. So, before the word "*compétitif*" we add the word "*national*," that is, "*un système de transport national compétitif, rentable*" and we move on to amendment NPD 2. We replace the words "*et bien adapté qui est sûr*" by "*et qui rencontre les plus hautes normes possibles de sécurité*". Then, rather than "*respecte l'environnement*" we say "*qui favorise un environnement durable et utilise tous les . . .*".

[English]

The Chair: I'm going to give this a shot in English, and if everyone agrees, basically it would say:

It is declared that a competitive, economic, efficient and adequate national transportation system that is safe and efficient, that meets the highest practicable safety and security standards, and contributes to a sustainable environment

And then the rest of the sentence.

Mr. Peter Julian: That's very good, Mr. Chair.

I should note that the French is much easier to understand.

The Chair: For you, maybe.

Mr. Peter Julian: No, but the way...and it's quite possible that my office drafted it first in French. The way Monsieur Laframboise said it in French is perfect, and you did an adequate translation.

The Chair: I would ask if there are any comments from our guests.

Ms. Borges.

Ms. Helena Borges (Director General, Surface Transportation Policy, Department of Transport): What we were trying to do with the revised statement was to simplify it, in fact, rather than make it as verbose as it is in the current act.

I'll just take one example. The word "adequate" in English does not have a comparable word in French. "*Bien adapté*" is the same thing as "efficient", right?

We always have a hard time defining what "adequate" means, whereas the other words in there are all objective. The word "competitive" is objective, "economic" is objective, "efficient" is objective, as are "safe and secure" and "respects the environment".

The whole concept of sustainability, as you may or may not know, encompasses the three factors—economic, social, and environmental. We believe that the clause, the way it is written now, with the sub-elements, has that concept in there. So we were just trying to keep it simplified, rather than throw in more language that makes it convoluted—keep it very precise, very flowing, very simple.

Some of the other motions address some of the elements in the enumeration following the opening statement. The word “national”, for example, is in the title. It is the national policy statement.

That was the objective of trying to simplify it. I think all the intent that you have is there. We don't normally talk about standards in a policy statement. It's the objective that we want to have a safe system and a secure system. The actual standards and regulations are dealt with through different acts of Parliament, for example, the Aeronautics Act or the Railway Safety Act, where they prescribe regulations or standards. This one deals with economic issues.

We would favour keeping it simple. I think all the key words are there, all the objectives remain there; it's simply how they're enunciated.

•(1555)

The Chair: Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): I would pick up, Mr. Chairman, on the use of the words “sustainable environment”. That means something very different from the wording in the bill at present. It fits into the preambular nature of the concept of sustainable development in most government bills these days that have a bearing on the environment and on sustainable development. It connects to the sustainable development strategy of the department.

I think it means slightly different things than simply the protection of the environment, or respecting the environment, as opposed to, in the sense of Mr. Julian's amendment, fostering a more sustainable environment. I think they mean two different things.

The Chair: Mr. Julian.

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

I'm just looking at the current national transportation policy. It talks about “a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities and that makes the best use of all available modes of transportation at the lowest total cost”. It goes on to talk about the “highest practicable safety standards”. It doesn't speak as much to the environment. However, I think it would be fair to say that Canadian society is involved to a certain extent.

Given that we do have the details in the current transportation policy, which is the current Canada Transportation Act, it would make sense to reinforce those principles, including the issue of sustainability, in this bill that we are bringing forward that provides amendments.

I think Mr. McGuinty is correct, though. I would argue that it's perfectly logical and reasonable for us to do that, because I think that's certainly what the Canadian public is looking to. It would hopefully guide government policy.

The Chair: Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: I'm coming back to your statement, Ms. Borges. Your text said “*bien adapté qui est sûr*” and we are proposing “*et qui rencontre les plus hautes normes possibles de sécurité*”. Do you think that, if we require that the system meet the highest possible safety and security standards—because we're not

asking the impossible—that's too much? You would have preferred to make it softer by simply saying “*bien adapté qui est sûr*”? It seems to that, in the public interest, the words “*les plus hautes normes possibles de sécurité*” are more reassuring than “*qui est sûr*”. Do you think we are going too far?

Mme Helena Borges: No, I don't think you are going too far. I think the objective is to have a safe and secure system. The standards to be reached are explained in the legislation, for example, on aeronautic and railway safety. But the objective we are trying to meet is for transportation to be safe, secure, economic and efficient. That is the objective and we are not talking about standards, in this case, in the preamble of the proclamation.

Mr. Mario Laframboise: Except that you are telling us those standards exist. So it's not serious if we don't talk about them since they exist.

Mme Helena Borges: In other legislation, yes.

[English]

The Chair: Okay. I have the wording drafted, and I'll ask Monsieur Laframboise to read it into the record, and then we can move on.

Go ahead, Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: That would make the French clause 2 of Bill C-11: “*Il est déclaré qu'un système de transport*” followed by the words “*national compétitif, rentable et qui rencontre les plus hautes normes possibles de sécurité, qui favorise un environnement durable et utilise tous les modes de transport et au coût le plus bas possible est essentiel à la satisfaction des besoins . . .*”

The Chair: Mr. Langlois.

Mr. Alain Langlois (Legal Counsel, Legal Services, Department of Transport): To follow up on what you just said, in new federal business terminology, the French term “*sécurité*” referring to railway safety, for example, or aeronautic safety, has been replaced by the term “*sûreté*.” The term is no longer “*sécurité*” but “*sûreté*.” Rereading your proposal, it would be more appropriate, in French, to say “*les plus hautes normes possibles de sûreté*” given that the “*sécurité*” aspect is already mentioned in the previous lines.

•(1600)

Mr. Mario Laframboise: If my colleagues have no objection, we can make the change, but I'm not a legal advisor. If you tell me the term “*sûreté*” replaces “*sécurité*” . . .

Mr. Alain Langlois: Those are the two terms, and both are accepted. If I go to the English version, you say: “the highest practicable safety and security standards.” In French, that would be: “*les plus hautes normes possibles de sûreté et de sécurité*.” The terms have different meanings, so you would have to use both.

Mr. Mario Laframboise: Both terms? That's no problem; “*de sûreté et de sécurité*” is fine with me.

[English]

The Chair: Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): As I understand, in the reading, if I heard what was read—and maybe I need to have it read again in English—there was a drop-out of the words “economic” and “efficient”. Or are they still in there?

Mr. Ed Fast (Abbotsford, CPC): That's out.

Mr. Don Bell: Why is that out?

Mr. Ed Fast: I don't know.

Mr. Don Bell: “Economic” and “efficient” were not in the translation.

The Chair: Mark, could you read that again *en français*, and then we can listen to the translation to see whether it's in or out. I thought I heard “economic” but not “efficient”.

[Translation]

The Clerk of the Committee (Mr. Mark D'Amore): In French, it reads as follows: “*national compétitif, rentable qui rencontre les plus hautes normes possibles de sûreté et de sécurité qui favorise un environnement durable . . .*”

[English]

The Chair: So in essence, “efficient” is not in there.

Mr. Don Bell: Can I ask the mover the reason why that would be?

[Translation]

Mr. Mario Laframboise: In English, it says: “competitive, economic and efficient” and, in French, it says: “*compétitif rentable.*”

Mr. Peter Julian: Excuse me, Mr. Chair, but the word “*rentable*” translates the two words. The word “*rentable*” has two meanings.

Mr. Mario Laframboise: We are using “*rentable*” for “economic and efficient.”

Mr. Peter Julian: So, the word “*rentable*” includes both.

[English]

The Chair: Mr. Bell, are you satisfied with that?

Mr. Don Bell: The English side would say “economic and efficient”.

Mr. Mario Laframboise: That's okay.

The Chair: Mr. Carrier.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): I need additional information. In the margin of clause 2 of the bill is written “declaration.” Is it a declaration that summarizes the spirit of the bill or the spirit of the whole transportation policy?

I see that we want to add many words such as “respects the environment” and “safety and security” but I don't think we find those words in the bill. I find it inconsistent to talk about respect for the environment when it is not mentioned anywhere in the bill.

Can we permit ourselves a great big declaration of principle without dwelling on it too much afterward? In that case, I would agree to the idea of adding many similar terms. I would like to know what meaning a declaration at the beginning of a bill has.

Ms. Helena Borges: It is to state the principles recommended for the transportation system. For example, in the Transport Canada mandate, in French, we always use words such as “*compétitif et*

économique.” In English, it's “efficient.” In French, I think the words to use would be “*bien adapté*” rather than just the word “*rentable.*” We always talk about safety, security and the environment. Those are principles, but even if there are no clauses that repeat all those words, the declaration serves to state the overall objective of the legislation.

Mr. Robert Carrier: That could be a recipe to use for other bills in the future.

• (1605)

Ms. Helena Borges: We would like to try and standardize the declaration in all transportation legislation, for example, the Marine Act and the Carriage by Air Act. If you compare this declaration to others, you will see that they are very similar. So, we try to reproduce the same declaration in all legislation of an economic nature.

[English]

The Chair: Mr. Fast.

Mr. Ed Fast: Thank you, Mr. Chair.

I'm a little bit confused, first of all with the wording that's been used and the translation, and secondly, as to what the reasons behind the amendments are. I still don't quite understand. Could I have the clerk read back the English version of the subamendment as it's presently proposed?

The Clerk:

It is declared that a competitive, economic, efficient and adequate national transportation system that meets the highest practical safety and security standards and contributes to a sustainable environment and makes

Mr. Ed Fast: All right, so the word “national” is just before “transportation system”. Is that correct?

The Clerk: Yes.

Mr. Ed Fast: Why are we using the word “adequate”? My understanding is that we hire very skilled drafters in government to do this job for us. They draft something in context, and we run a serious risk, when we start nitpicking and inserting our own terms, of upsetting that very delicate balance that drafters use when they put together legislation. Later on there are some further amendments, and I'll be raising the issue again that there's a danger of our losing the balance between some of the parts of this particular clause because we're mickey-mousing around with the wording.

The word “adequate”, quite frankly, to my mind, coming from a legal background, is inviting litigation. It's returning uncertainty to something that the drafters had hoped was going to be certain. If this is any indication of where we're going with some of these amendments, I'm a little discouraged. I do trust our staff. It doesn't mean we don't exercise oversight over what they do, but at the same time, we have to trust them to a certain degree to provide us with the kind of wording and the flexibility that are required to deliver what we're hoping to deliver with Bill C-11.

I'm not sure this is a great start for us.

Mr. Brian Jean: I was actually going to echo something that Mr. Fast said. I do have a problem with “adequate”, but the rest I don't, quite frankly, see as much of a burden on us. But “adequate” I think does invite varied opinion, and I agree with Mr. Fast on that particular wording.

The Chair: I've always seen “adequate” as “minimum”, but that's only my thought on the issue.

Are there any other comments?

Mr. Julian.

Mr. Peter Julian: Just briefly, Mr. Chair, it's perfectly within our purview as a committee to seek improvements to the bill based on what we've heard or on what we know. The issue of sustainability is something that's out there in the community and that Canadians feel very strongly about.

Does it upset the apple cart? Does it in any way throw into some uncertainty the bill? No. It's a statement of principles around a national transportation policy. What we have is a change or a shift from the national transportation policy that is currently in place, which is very detailed.

Even with the amendment that Mr. Laframboise is presenting, it's certainly not more detailed than the current transportation policy, but what we are trying to do is address a couple of weaknesses within that particular clause of the bill. I don't think it's a big issue. The one on sustainability I think most of the public would agree with, and it doesn't in any way contravene or upset other parts of the bill. And that's why I moved those motions, though I think Mr. Laframboise's consolidated motion is an improvement.

• (1610)

Mr. Brian Jean: All I was going to say, and I didn't mention it, is that I think “adequate” does, as you said, weaken the purpose of the legislation, and for that reason I don't like it. But I think the amendment that Mr. McGuinty specifically put forward on environment is clear, and I think that's good. I couldn't support the motion on the basis of “adequate” myself, but if that word were removed, I would certainly be prepared to.

Mr. Don Bell: I have a question, maybe through to the staff who are here.

In terms of the word “adequate”, I understand the reason for it. Having drafted municipal legislation in the past, I appreciate the danger of fuzzifying a word, but at the same time, if somebody were to raise an issue with us, if the word “adequate” wasn't in there and we were to get complaints, as we may well do, from constituent groups or constituents that in fact a particular service is not adequate, as they describe it when they come to us as representatives... I realize that “adequate” is subjective, but if we agree with them that, based on a population in an area, the service going in is not appropriate or that it isn't appropriate for commercial purposes or whatever it would be, doesn't this at least gives the opening to argue a point? If it's not in there, if there is no reference to adequacy, where would a level of service—whether it be a level of security, a level of frequency, a level of economic return, a response—be addressed by someone who had a concern? Or could their concern be dismissed as not being in the act?

The Chair: Before I ask you to answer that question, careful perusal of the amendment by Mr. Laframboise shows that it does not include the word “adequate”.

Mr. Brian Jean: I withdraw my comments.

Mr. Don Bell: I would still like an answer, if I could, for that reason.

Ms. Helena Borges: When there is a complaint filed—it doesn't matter which part of the act it is—there's usually the section of the act that deals with the adequacy of the service. In fact, the way it was being proposed, it talked about an adequate system. So it's the adequacy of the system, not the service.

There are provisions, for example, in the rail section, part 3, section 116, which deals with service levels, and in there you will find definitions that use the words to talk about the service specifically. This is not a provision in and of itself; it's a guiding statement. It's a statement that sets out the objectives for the transportation system as a whole, and that's what these are talking to. But if there's an actual complaint or whatever, they are dealt with in the specific sections of the act.

Ms. Helena Borges: It would depend on the service to which you're speaking, but for example, there are provisions in the act that deal specifically with the recourses available if the service isn't provided or if there are complaints about the service. It's not through the statement that you would deal with it.

Mr. Don Bell: Okay.

The Chair: Just for clarification, I'll read it again, and then we can perhaps move on.

It is declared that a competitive, economic, efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes

Mr. Fast.

Mr. Ed Fast: I'm glad the word “adequate” is not in there. It was only one of two other terms that I found problematic. I think the words “highest practicable” again raise some ambiguity and invite litigation, and also the term “sustainable environment”.

Mr. McGuinty had made some comments about that term and I may have misunderstood him, because I understood he had his own concerns about that term. Or were you simply supporting it?

Mr. David McGuinty: I was supporting it.

Mr. Ed Fast: You were supporting it. Okay.

I also want to make the comment that the term “highest practicable safety” implies that this is in fact primarily a safety bill. It isn't a safety bill. In fact we've discussed this a number of times at this table, that we will be dealing with rail safety in the future. I'd like to defer again to the counsel at this table and ask whether they see any difficulty in incorporating the terms “highest practicable” and “sustainable environment”. If they feel that fits into this legislation and there's no significant change in the balance within the legislation as they've drafted it, I would feel comfortable with it—because I'm not an expert in the area.

•(1615)

Mr. Alain Langlois: I can give you a bit of background. These words are in the current policy statement. The reason they were removed is that it's unusual to find in a policy statement something that will establish or refer to a specific norm or standard. A policy statement is usually meant as establishing objectives. The rest of the act, including the amendment that will be proposed to this bill, is designed to achieve the objectives that are set out in the policy statement.

When you refer to the highest safety standards, it's not clear what standards you're referring to. You don't know what those higher standards are. Those standards will be established through legislation and a clear provision that will determine specifically what those standards are—the Railway Safety Act, for example, and the Aeronautics Act, which established it in terms of the airline industry. That's why it was removed from the current policy statement. It was to remove the reference to any specific norm, because it was inappropriate to find that in a policy statement.

With respect to the word “adequate”, and I know that we have moved on, the word was removed for the same reason. Not only were the drafters unable to find where this term fit in respect of any of the other terms that were used and therefore found it very repetitive, but also it created some ambiguity, and that's why it was removed.

So that's the bit of background I can provide to you.

The Chair: Mr. Julian.

Mr. Peter Julian: The current national transportation policy, under section 5, starts off by saying:

It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities

It then goes on in paragraph (a) to say:

the national transportation system meets the highest practicable safety standards

If we don't adopt Monsieur Laframboise's motion, we're diminishing or watering down what currently exists as our national transportation policy.

Just to get a little bit ahead, the next amendment we're bringing forward is on persons with disabilities. We're referring to the current national transportation policy. So this already is in place—talking about the highest practicable safety standards, meeting the needs of people with disabilities, and having an adequate network of viable and effective transportation services. That's all here. We're making a political choice if we take all those words out, and that's what's in the version that has come before us of Bill C-11.

It's certainly not an inconsistency to say this transportation policy has been streamlined, but there are some elements that must be contained within it, and they're already there. If we choose not to adopt Monsieur Laframboise's motion, then essentially we're watering down what the current national transportation policy, as adopted by Parliament, says.

The Chair: Mr. Scott.

Hon. Andy Scott: I think if we're trying to articulate the objectives in a general statement in advance, one could read that statement in terms of the pursuit of particular economic, competitive,

efficient...and competing against those efficiency-type objectives would be safe and sustainable. Sometimes those two objectives wouldn't necessarily be consistent, and I don't think anyone here wants us to argue in favour of an economic, efficient, competitive system at the expense of safety.

I think, just to make it clear, that is the reason that kind of language is being requested, so that we understand the balance we're trying to find.

As far as the argument that we're trying to make it clearer goes, I don't think we want to make it clearer at the expense of safety or economic integrity.

•(1620)

The Chair: Thank you, Mr. Scott.

(Subamendment agreed to [See *Minutes of Proceedings*])

The Chair: We're moving on now to page 4 in your handout. There is a government amendment.

(Amendment agreed to [See *Minutes of Proceedings*])

We have just approved your amendment.

Mr. Peter Julian: Okay. I'm in favour of that.

The Chair: Mr. Jean, you have something regarding the amendment G-1?

Mr. Brian Jean: Yes, Mr. Chair. It is simply an administrative issue. My understanding is that the French version—which I don't read very well—has the terminology “the best use of all modes of transportation”. The English doesn't have it, and the French does. I think that's the situation.

(Amendment agreed to)

The Chair: We will move now to page 5.

Mr. Julian.

Mr. Peter Julian: We're moving along here very well. Thank you, Mr. Chair.

This restores the issue of persons with disabilities. As I mentioned before, the current national transportation policy refers to people with disabilities a number of different times, including the following:

It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities

It goes on later on:

is essential to serve the transportation needs...including persons with disabilities

This is an extremely important element to keep in a national transportation policy, particularly when we're talking about five million Canadians with disabilities across the country. So I don't think there will be any disagreement with that.

This amendment would simply ensure that we are including that in clause 2.

The Chair: Are there any comments?

Yes, Mr. Jean.

Mr. Brian Jean: I just read the amendment in proposed paragraph (d) that deals with the mobility of persons with disabilities. I am wondering why it needs to be recited twice, making more paperwork and killing more trees and hurting more beavers and all that kind of thing.

Mr. Peter Julian: Mr. Chair, the intention is certainly not to hurt beavers—

Mr. Brian Jean: I mean trees, especially.

Mr. Peter Julian: —or kill trees. It's simply reinforcing the initial clause 2. As I mentioned, there are a number of references in the current national transportation policy. It is true that in proposed paragraph (d) there is a reference to “without undue obstacle to the mobility of persons”. That is a negative definition. We would like to counterbalance it with a positive definition as part of clause 2, talking about serving the needs of its users, including people with disabilities. It's stronger language.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, my understanding is that most of the acts I've referenced in the past have included this type of wording. I'm wondering if maybe the department could give us something. I think duplicating is not of any help to anybody, but if it does give it more effort and more effect, maybe it is.

Mr. Alain Langlois: Again, I refer the committee to the current policy statement. The wording used is “persons with disabilities”, “shippers”, “travellers”, “carriers”. Again, in an effort to make the policy statement concise, the drafters used the generic term “users”, which includes everyone who uses the transportation system, which includes persons with disabilities. Hence, this is why the “persons with disabilities” was removed from the opening paragraph. It was in an effort to avoid redundancy.

•(1625)

The Chair: Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: My question is along the same line. Yes, there are persons with disabilities, but there are also pregnant women, children, seniors. Therefore I don't really want to exclude other persons with special needs by adding the words “with disabilities.”

What you are explaining to me is that there is already, in the proposed clause 5(d), a specific reference to persons with disabilities. To a certain extent, that's it, right?

Mr. Alain Langlois: That is the gist of it. The currently existing policy gives details on the groups and tries to list the people favourably affected by the policy, but it is impossible to list all those people. In an effort to group them together using a single word, the term “user” has been used, and that includes everyone, including persons with disabilities and the persons you are referring to, whether it may be a pregnant woman or any other user, even the transporter's employees.

It's a generic term that essentially includes everyone who uses the transportation system. That was the intent of that provision.

[*English*]

The Chair: Mr. McGuinty.

Mr. David McGuinty: Mr. Chair, I guess I could go either way on this. I would agree with the thinking of Mr. Julian, that simply all too often transportation systems do forget to include persons with disabilities. Maybe it's the general conclusion that most of us draw, as members of Parliament who serve the public. It's a serious problem in the country. We have an aging population. Roughly 13% of the Canadian population today has a form of disability. In the next 15 or 20 years, we're going to see that increase to roughly 20%. S

o I'm torn, and I don't know whether there's a significant difference or not. As Mr. Jean rightly points out, proposed paragraph 5(d) does speak specifically to persons with disabilities. So I don't know.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I think the key is the last sentence: “Those objectives are most likely to be achieved when”. And then it goes on to say “including persons with disabilities”. I don't see the purpose of it, and quite frankly, it keeps it very straight in my mind having it this way—I don't know about everybody else's. So if Mr. Julian wants to put some more emphasis on proposed paragraph (d) in relation to people with disabilities, I can understand that. But I don't see the purpose of doing it there. I don't think it accomplishes anything. In fact, it really derails the intent of the clause.

The Chair: Mr. Julian.

Mr. Peter Julian: It's not to hurt trees, and it's not to derail the clause. It's a simple enunciation of what is already in the national transportation policy, which refers to the needs of people with disabilities three times. So what we've gone from is a national transportation policy that refers to people with disabilities on three occasions—in the initial paragraph twice, and then later on it talks about “an undue obstacle to the mobility of persons, including persons with disabilities”—to a national policy statement that only refers to it once. I think that would be a mistake. I think there is probably more understanding of the needs of people with disabilities now than when the former national transportation policy statement was adopted. So I think it would not show well for this committee to water down what is an important component of the national transportation policy as it exists now.

Mr. Brian Jean: Does it water it down?

Mr. Chair, I just wonder if we could hear from the legal counsel, or in fact from Ms. Borges, as to whether or not it does water it down.

Ms. Helena Borges: In our view, in fact, it highlights it more than in the previous bill. In the previous bill, as Alain said earlier, it enumerates all of the entities that are considered users in this bill. So you have shippers, and you have communities; you have everybody. In this one, all the users are categorized as one, and the one that stands out is enumerated in proposed paragraph 5(d), which is including the persons with disabilities. So in terms of highlighting it, I think this one gives it more emphasis, more priority. And everybody else is grouped together so that we don't have to enumerate everybody else who is a beneficiary or included in the provisions of this bill.

I can tell you now that if we do that, when it gets to the Senate I'm going to have a whole lot of angry shippers coming to see me asking why we didn't include the word "shippers" in there or why we didn't include the others? Trust me. We have another bill to come.

It is a concern, and we believe that paragraph (d) does give it the emphasis that it merits. And we agree with you, it's very important, and that's why it is in paragraph (d).

• (1630)

Mr. Brian Jean: We're moving towards smart regulations, we're moving towards language that everybody can read, and I would think we would move towards simplicity as long as we get the effect of the legislation.

No disrespect, but by Mr. Julian's analysis, we should maybe put it in 10 times to make sure it gets proper emphasis.

The reality is that it's in there. It has its separate clause. I think it's very important. It's very important to Canadians, but indeed I think it accomplishes what it set out to do.

The Chair: Mr. Hubbard.

Hon. Charles Hubbard (Miramichi, Lib.): The other little part I didn't quite understand is why Mr. Julian has "advance the well-being of Canadians". Could he explain what he meant by that?

An hon. member: It's in the bill.

Mr. Peter Julian: Yes, currently it reads, "is essential to serve the needs of its users, advance the well-being of Canadians", and we would add to that, "including persons with disabilities".

Hon. Charles Hubbard: So it's to put that down in the section again.

Mr. Peter Julian: Yes, so the rest is already in the bill.

The Chair: I will now call the vote on the amendment.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Mr. Julian.

Mr. Peter Julian: We're a quarter of the way through the NDP amendments.

The Chair: Should we base the amendments on the percentages that we talked about at the first committee meeting?

Mr. Peter Julian: No, I just want to make clear that we're sort of at the front end. If we've been at this for an hour and we're a quarter of the way through the NDP amendments, then I think we're right on schedule—just in case anyone starts to push that we move a little bit more quickly.

Again here, when we refer to the specific statement in clause 2, it says: competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;

We would be adding two words, "when possible", so it would read "when possible, the prime agents".

I think it's fair to say, when we're talking about a policy statement, that competition and market forces are not uniquely the method by which we provide viable and effective transportation services. They are often the way of providing that; I have no doubt about that. But there are also other cases where, with public transportation, we supplement viable and effective transportation services for areas that are more remote,

[*Translation*]

areas that are more remote.

[*English*]

So it's balancing off competition and market forces with the need to supplement that, often through public transportation. I think it makes the statement less absolute in nature and does suggest that there is a role for public transportation to play as well.

[*Translation*]

That is why we are proposing the amendment.

[*English*]

The Chair: Are there any comments?

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: Comparing the French and English wording, I have a question. In French, it says: "*si les circonstances le permettent.*" The circumstances, what does that mean, exactly? However, in English, it's "when possible," that is, "*lorsque possible*" in French, which is not the same thing as "*si les circonstances le permettent.*" There is a difference in meaning between the two.

Ms. Helena Borges: We did not word it like that . . .

Mr. Robert Carrier: I know but I am discussing the amendment. That is why I would like to consult you, to ask your opinion about the interpretation of the two wordings.

Ms. Helena Borges: We are against the amendment because the proposed clause 5(b) reads that when competition and market forces do not allow the objectives to be met, at that time, the government should intervene. That is the rationale for clause 2(b): when the market does not produce the expected results, we use regulations or government investment to get there. I think that what Mr. Julian wants to achieve with his amendment is already in clause 2(b). The same part, in English, reads as follows:

• (1635)

[*English*]

cannot be achieved satisfactorily by competition and market forces and they do not unduly favour, or reduce the inherent advantages of, any particular mode

Then the government intervenes through regulation or public investment so that we step in and provide the services that are required or subsidize services that are required.

So proposed paragraphs 5(a) and 5(b) complement each other. First and foremost, competition market forces should be providing; and secondly, when that can't happen, the government can intervene.

The Chair: Mr. Jean.

Mr. Brian Jean: She took the words right out of my mouth.

The Chair: Are there any other comments?

Mr. Julian.

Mr. Peter Julian: Mr. Chair, I would disagree with the last intervention. I think we're talking about a statement of principles and making sure it is clear that there are situations where public intervention is actually very appropriate.

I think the way to do that is by amending proposed paragraph 5(a). Paragraph 5(b) is an absolute that I would not agree with, but if we have paragraph 5(a) amended, then I think there's a balance between the absolute statements made in paragraph 5(b) and paragraph 5(a) that very clearly indicates that there are times when public transportation or public transportation services are appropriate.

The Chair: Mr. Fast.

Mr. Ed Fast: Mr. Chair, you're really looking at a contradiction in terms. We state in paragraph 5(a) that "competition and market forces...are the prime agents". It's a clear statement of direction. You completely take away the effect of that when you inject the words "if possible".

It's unnecessary because it's only one of five different strategies that are enumerated as paragraphs here. Some of those have already been highlighted by others, which would address the balance.

We're not saying competition and market forces are the only way to provide transportation services in Canada; however, it is the prime way that we would like to deliver them. It's a statement. If you add the words "if possible", you're then taking away from the statement, basically rendering that particular paragraph ineffective, and it means nothing.

The Chair: Mr. Scott.

Hon. Andy Scott: I think we see an ideological cleavage here. I think it's the hierarchy that is presented here.

I speak only for myself. But I also concur that it is not necessarily a case where you're going to get the best product if you start out by saying this is the best way and then you qualify it in this way.

I agree with Mr. Julian. I think there are times when in fact that isn't the best way to deliver it. Whether or not the wording "when possible" is necessarily the best wording to describe that qualification, I think I would be prepared to support some form of qualification to say it is not always the case. The prime way to do this is privately.

I think we should simply agree to disagree on that view of the world.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Are they new amendments or were they included in their entirety in the former bill?

Ms. Helena Borges: It is identical to what is in the former Bill C-44.

Mr. Mario Laframboise: It's the same thing. Okay, thank you.

[*English*]

The Chair: Mr. Jean.

Mr. Brian Jean: Quite simply, I really don't understand. I understand what Mr. Julian is trying to push forward is an agenda, and I understand his synopsis on that. But I'm indeed wondering if there's anything he sees in paragraph 5(b) that may be left out.

First of all, we look at the primary purpose as being competition. Secondly, if they don't meet the objectives of the economic, environmental, and social outcomes, something else has to be done. I don't see it as being contrary, but I'm wondering if Mr. Fast isn't correct on that.

I'd like to hear from the counsel whether or not it indeed weakens the strategy of the declaration itself.

Mr. Alain Langlois: The way this policy was drafted was to declare that the objectives that are set out in the opening paragraph are to be achieved in a certain context. You have five criteria to examine in order to see if you have achieved the objectives, the first one being competition and market forces as the prime agents.

Paragraph 5(a) has to be read with the other ones. As a matter of construction and having interpreted the previous section in numerous cases, you don't simply focus on one and say this is the primary one. You have to read the section as a whole, and you then establish whether or not the case before you meets the objectives that are stated in the opening statement.

But the concern that I personally have, from a drafting perspective, is that the safeguards to paragraph 5(a) are set out in paragraph 5(b). It was constructed in that way so the five paragraphs would be read as a whole. Each paragraph would balance against the other to establish a balance in terms of what should be put in the system to achieve the objectives that are stated in the opening paragraph.

● (1640)

The Chair: Mr. Julian.

Mr. Peter Julian: Here's what the current national transportation policy says—and this was adopted under the Liberals. It says that:

(b) competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services,

(c) economic regulation of carriers and modes of transportation occurs only in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and that such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other carrier or mode of transportation,

(d) transportation is recognized as a key to regional economic development and that commercial viability of transportation links is balanced with regional economic development objectives so that the potential economic strengths of each region may be realized,

So we have a major shift in what exists now and what this intends to do. The amendment is designed to bring it more in keeping with what we have right now, that “competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services”. So this is a shift if we don't adopt these amendments. It's a significant shift in how transportation policy evolves.

I would disagree with that emphasis. Mr. Scott and I are on the same wavelength, and hopefully the majority of the committee will be, as well.

The Chair: With that, I will ask if the amendment shall carry.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: We're moving now to pages 6.1 and 6.2, Liberal amendments. Mr. McGuinty, you'll be presenting this, I presume?

Just as comment and information from the chair, there is a line conflict with your second amendment. If the first amendment is adopted, then the second one cannot be proceeded with. But again, as we did with the first set of amendments, they can be grouped together, then a third amendment brought forward and voted on.

So I'll ask you to speak on it, and then we'll have some discussion that way.

Ms. Allison Padova (Committee Researcher): Chair, can we get copies if we don't have any?

The Chair: You should have them, yes.

• (1645)

Ms. Allison Padova: That would be helpful.

The Chair: Does everybody have that? It's pages 6.1 and 6.2.

I think we'll wait until everybody has the document.

• _____ (Pause) _____
•

The Chair: If I'm correct, everyone has the document now.

Similar to what we did with the first group of amendments, I've asked Mr. McGuinty to debate or discuss both of the amendments together. We'll then get an amended amendment for the committee to either vote for or against or debate.

Mr. David McGuinty: Thank you, Mr. Chairman.

Both of these amendments, taken together, fall hard on the heels of what we were just discussing a moment ago, about the overall thrust of the policy statement for transport in Canada. I'm cognizant of what Mr. Langlois just said, which is to take paragraphs (a), (b), (c), (d), and (e) together, as one whole, and to try to situate them.

I would tend to agree with the interpretation of a few members of the committee. The general reading of the policy objectives tends to have a harder free market competition and market force edge to it.

The import of what I'm trying to propose here is that we do two things. I'd like to see more directly reflected, in this particular paragraph, the question of security and safety. By inserting safety and security into the policy statement as valid reasons for either regulation or strategic public intervention, it would properly state the

importance of the federal government's role in the safety and security of our national transportation system. I think the current policy understates the importance of the federal government's role in the safety and security of our national transportation system. So one part of this, Mr. Chairman, is the insertion of the words “safety, security”. That's part A, if people can bear with me for a moment.

The second part of this speaks more directly to when regulation and strategic public intervention can occur. As presently worded, we talk about regulation and strategic public intervention occurring only if they're necessary, as if to say and to imply that the Government of Canada's role in regulating and in bringing about strategic public intervention should be tempered by a test whereby we decide whether or not the free market's being fettered or not. I'm not sure that's wise, given some of the unpredictables that this bill is purporting to allow us to address on safety and security alone, for example.

My view is that I'm not so sure we want to limit or fetter the federal government's power to regulate for the benefit of Canada and Canadians generally, and not simply juxtaposed against the free market and fully functioning competition and market forces that are cited in paragraph (a). That's the general thinking, the rationale, Mr. Chairman, behind these two. The wording basically is trying to state clearly not only that would the federal government regulate and bring about strategic public interventions if these are necessary, but that the federal government in fact would be directed to do so to achieve specific outcomes. That's my rationale.

Does anyone understand what I've said?

• (1650)

The Chair: I have asked Mr. McGuinty to redraft what he has just said into an amendment, and I'll ask someone at the end...because we are considering two amendments, as we did in the first discussion.

Mr. Laframboise, and then Mr. Julian.

[*Translation*]

Mr. Mario Laframboise: Mr. Chair, I see no reason to split those two amendments, because they are completely different. That's how I see them.

In fact, the French version of the first amendment is intended to change lines 10 and 11, by removing the words “*ne*” and “*que si elles sont nécessaires*.” The clause would thus read: “*b) la réglementation et les mesures publiques stratégiques sont utilisées pour l'obtention de résultats [. . .]*”. All we are doing is completely removing the words “*ne*” and “*que si elles sont nécessaires*”. That is the first amendment.

In the second amendment, we are adding text. I think we can vote on the two amendments separately.

Mr. Clerk, I would like to know what you think, because it's important to me.

I think the first amendment is of interest because we are not making the proposed clause 5(b) a secondary condition but in fact a condition equal to clauses (a), (c), (d) and (e). That is what Mr. McGuinty wants to do.

So we mean, “regulation and strategic public intervention are directed to achieve [. . .].”

I think the objective of the first amendment is that clause 5(b) is not a condition if the other does not apply; it is as important a condition as clause 5(a).

In the second amendment, we add the words “economic or environmental” and we also add “safety or security.”

Mr. Clerk, I would just like to hear your opinion, because splitting those two amendments poses a problem for me. I consider them fine as tabled.

[English]

The Chair: I think the major difficulty, and you've maybe outlined it in your opening comments, is that on the English side the first amendment is amending lines 10 through 14 in the English version. The second amendment amends line 11. You can't amend something that you've done previously, so that's why I've asked Mr. McGuinty to put them together and come up with one amendment. I know Mr. McGuinty has something prepared to read so that we can actually hear a complete amendment.

Mr. Julian.

•(1655)

[Translation]

Mr. Peter Julian: I would like to intervene along the same line as Mr. Laframboise. We could perhaps hear the answer now and I will speak to the principle of the amendment after that.

[English]

The Chair: Mr. McGuinty, in light of the rules and regulations, we actually need to have someone else.... I'm certainly prepared to let you read it into the record, but someone else will have to move it.

Mr. Bell will move the motion, but Mr. McGuinty is going to read the motion into the record. He's going to clarify it.

Mr. David McGuinty: I'll share my time, and I will try to clarify it.

If we begin with “those objectives are most likely to be achieved when”, then we go to:

regulation and strategic public intervention are directed to achieve economic or environmental or safety, security or other social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour or reduce the inherent advantages of any particular mode of transportation.

The Chair: Might I ask you to read it one more time?

Mr. Brian Jean: With respect, cutting to the chase and getting to the meat and potatoes, I think the safety and security aspect added to this is good. Even though this isn't a safety bill, I think it's good and it doesn't detract or take away from the clause itself.

I have a real problem with “directed”. I even think, in essence, what you've done with that little play on words is change the focus and really the whole bill itself, or at least the policy. I'm very

uncomfortable with the word “directed”. I've been listening and listening and trying to keep an open mind here, but I can't find how it remains consistent with the bill at this stage, with this drafting.

Quite frankly, I'd like to hear from the department in relation to that.

Ms. Helena Borges: We would agree with Mr. Jean that we wouldn't have an issue with adding safety and security in the list of outcomes.

Mr. McGuinty deleted the words “occur only if they are necessary”. As we were speaking about proposed paragraph 5(a), it basically says that competition and market forces are the prime agents. If we change this wording, we are now in fact suggesting that regulation and strategic intervention become the prime force again. It is really meant to be only when market forces and competition do not provide that outcome. It changes the sense of the provision considerably.

We don't, however, have an issue with adding safety and security. That would be fine.

Mr. Brian Jean: I'd support this amendment. It provides an effective balance for what is clearly enunciated here.

It's been a problem. We've now talked about it on a couple of amendments. We have a problem between basically giving no play to the public sector and talking about competition and market forces as being the only route to take.

There is the rare exception and a very strict definition that would be the only exception in terms of public transportation. I refer back to the national transportation policy, which we are in effect amending. It talks about “competition and market forces...whenever possible”. It talks about the economic regulation of carriers and modes of transportation occurring in services and regions. It talks about transportation being recognized as a key to regional economic development.

Mr. Bell's amendment talks to what is already in the national transportation policy. It does add the element of the environment, which is something. It is fair to say almost all Canadians would welcome this committee's adding it in as an element that has to be taken into consideration for policy purposes.

The amendment is very helpful. It talks about economic outcomes, as the current policy does. It talks about social outcomes, which the current policy does. It doesn't use the exact same words, but it is clearly referenced in the current transportation policy. It then adds an environmental component that we already adopted when we adopted the initial amendments from Monsieur Laframboise. It is very consistent with what we have put in place so far in this clause-by-clause analysis.

If we don't put it in, we end up with a contradiction between a policy enunciation that talks about the environment and the role transportation plays and the current clause that says public intervention only occurs in a very strict and limited type of situation.

I don't think it's where most Canadians are at. I certainly don't think it's where Canadians would want us to go. I think this amendment is very helpful.

Mr. Peter Julian: Monsieur Laframboise.

• (1700)

[*Translation*]

Mr. Mario Laframboise: Ms. Borges, I am going back to what you said.

In my opinion, it's the opposite, that is, it does not change anything in clause 5(a) where it still states that "market forces [. . .] are the prime agents [. . .]."

Except that by using the words "only if they are necessary" in clause 5(b), it's as if market forces were the only agents, which is not what we want.

Market forces are the prime agent but, with Mr. Bell's amendment, the other directions we want to give are also important. I think that is what we are delivering. If we were to support Mr. Bell's motion, it would mean there are not only market forces. In fact, the way your clause 5(b) is drafted, as you tabled it, it can be read: "only if they are necessary." It's as if market forces were the only conditions while, in our case, we are saying to the industry that market forces are not the only conditions; the environmental issues, safety and security also have to be taken into consideration. In clause 5(b), we still keep the same text, stating that if the outcomes "cannot be achieved satisfactorily by . . . market forces [. . .]." We keep those words but add greater importance to other agents than they had. I don't think we eliminate the fact that market forces are the prime agent. That is why I do not recommend changing the proposed clause 5(a).

However, by adding the amendment from Mr. Bell and Mr. McGuinty, we give other conditions greater force, without eliminating the prime agents, which are market forces and competition.

[*English*]

The Chair: Mr. Jean.

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

If I can be blunt, I think the wording and the word "directed" is very bad to use in this particular case. It also brings uncertainty to the marketplace from an economic perspective. As a business person looking at transportation modes.... It doesn't mean that through the great Conservative government's initiatives like transit passes, tax deductions, and other things, we can't encourage people to use public transit, fund it, and use competition. But I think it detracts from it. It creates some error and some amount of uncertainty in the marketplace in which we're trying to encourage people to invest to create more modes of transportation and better modes.

I don't know how the French translation comes out, but I'm very uncomfortable with the English and the word "directed".

The Chair: Mr. Fast.

Mr. Ed Fast: I concur with Mr. Jean, because if you look at proposed paragraphs 5(a) and 5(b), they are two parts of the whole. You refer to the competition and market forces as being the prime agents. "Prime" implies that there's a secondary group involved

here—not one more important than the other, but one taking the leading role—and the secondary one is addressed in proposed paragraph 5(b). If we agree to the amendment proposed, it really contradicts what we've done in proposed paragraph 5(a). You're basically establishing two even forces competing in the marketplace, and that's my concern.

I believe our drafters have worked very hard to make sure this is balanced. We have proposed paragraphs 5(a) and 5(b). Proposed paragraph 5(a) sets out the prime. Proposed paragraph 5(b) essentially sets out the secondary role government plays if proposed paragraph 5(a) doesn't fulfill the mandate we require for transportation.

I think that's the direction you're coming from. Is that correct?

• (1705)

Ms. Helena Borges: I have a little further elaboration. I would like to correct Mr. Julian, who said that "environmental" wasn't there. It's currently in the bill.

We have to remember that the bill was last updated in 1995 and came into force in 1996. If you look at what has happened in the transportation sector, we have had a devolution of the airports to private sector entities—no longer the government. We have had the same thing occur in ports and in Nav Canada. The majority of what used to be publicly delivered is now delivered by competition and market forces.

As you say, Mr. Fast, that is the prime agent. The government should need to step in only when that fails, and then to regulate or provide intervention that makes up for that failure or lack of ability of the private sector competition to deliver it. But it isn't the prime force.

We're also concerned that putting in the word "directed" really gives it a much stronger sense than what it is meant to convey right now.

The Chair: Mr. McGuinty.

Mr. David McGuinty: Perhaps I can respond to a few comments, Mr. Chairman.

First of all, I don't think it's about juxtaposing proposed paragraphs 5(a) and (b); it's about juxtaposing proposed paragraphs 5(a), (b), (c), (d), and (e). As we've heard from legal counsel, you cannot read any one of these in isolation. Taken as a whole, they are to speak to the balance that we're trying to achieve. These are the criteria, (a) through (e), that we're setting out to achieve the national policy. My general sense, from hearing and reading what was drafted in previous bills and what has arrived here for us to consider, is that there has been....

Ms. Borges pointed out—rightly, I think—the strong bent towards competition and market forces in the wake of deregulation, in the wake of CN's devolution, in the wake of airport authorities' devolution, and so on and so forth. I think the concern manifested by a number of us here is that proposed paragraph 5(b) might be the operative paragraph where we can strike a bit more balance. But in terms of (b), I'm more concerned, to be frank with you, about whether or not the federal government here is fettering and limiting unnecessarily its powers by talking about only regulating, only making strategic public interventions, when they're necessary.

When they're necessary for what? Well, as it says here, “to achieve economic, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces”. That would mean, for example, that if the federal government wanted to invest in light rail, say, in five major cities, it would have to somehow meet the test of it being necessary, because the market itself isn't providing enough funding or isn't supplying the transit systems we need for five major cities.

I don't know why, as drafters, it was necessary for you to fetter, in my view, the federal government's powers, to limit those powers, in the policy. This is one of the core criteria we're going to use to achieve the policy objective—I think that's what it says in English—and I'm just trying to understand why we have, in this operative passage, “only if they are necessary”. This is a new test that was not in the previous draft....

Am I mistaken? It was in the previous bill?

Ms. Helena Borges: Yes.

Mr. David McGuinty: Exactly as worded? Okay. Then I stand corrected. But I think it would be a wonderful marriage of not only....

As I think we talked about, Mr. Chairmen, safety and security seem to be not the issue, but I think it would be important to clarify this question of “only if they are necessary”.

Maybe the word that people are getting hung up on is the word “directed”. I think that word should be used in its plain sense, not in the sense of receiving a *direction*; rather, to direct a regulatory approach and direct a strategic public intervention to achieve economic or environmental or safety, security, or other social outcomes.

I hope that clarifies.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Chair, I am astonished by the government's reaction.

My question is addressed to the legislative clerk. If the amendment as such changes the nature of the bill, is that amendment admissible? Have you had the chance to analyse amendment LIB-0.1 tabled by the Liberals? If it changes the meaning of the bill, as far as I know, you can rule that part of the amendment inadmissible.

If you have not had time to analyse the new amendment and you want to take time to do so, that's no problem. I do not want to change the nature of the bill and be told the amendment was inadmissible. If it is admissible, tell us.

• (1710)

[*English*]

The Chair: I am advised that it is admissible.

Ms. Borges.

Ms. Helena Borges: Perhaps we can offer a compromise to Mr. McGuinty.

I get the sense that your concern, the way you're expressing it, is that we are limiting the government's ability to intervene, and that really it's because of the word “only”. If we remove the word “only” and say instead, “occur if they are necessary to achieve” these objectives, would that achieve your objectives? We think the constraint here is in the word “only”, but that's further to your explanation.

Mr. David McGuinty: So you would take out the word.

Ms. Helena Borges: Yes. We would leave the rest as is and take out the word “only”, which is what's constraining it now.

[*Translation*]

Mr. Robert Carrier: Could you just translate into French what you proposed?

Ms. Helena Borges: The clause would read as follows:

b) la réglementation et les mesures publiques stratégiques sont utilisées si elles sont nécessaires [...]

It's positive rather than negative.

[*English*]

Mr. David McGuinty: Mr. Chairman, I don't think it meets my concern:

those objectives are most likely to be achieved when regulation and strategic public intervention occur, if they are necessary to achieve economic

Why don't we remove entirely the words “if they are necessary”?

Ms. Helena Borges: We believe “if it is necessary” is where the intervention should happen. I thought it was consistent with what you were putting forward, that the government intervenes where it is necessary to do so. We're not constraining ourselves in that way. But generally the government isn't going to intervene. We would prefer that market forces and competition continue to do that work.

Mr. Alain Langlois: As I mentioned earlier, I want to clarify one point. This is in the current national transportation policy statement, which is found in the current section 5 of the Canada Transportation Act, and “only if necessary” has not been interpreted as fettering the minister's discretion to regulation.

Quite the opposite, this section has been used to support the fact that when a section is enacted in the statute or any other statute to which this policy relates, it's a recognition or a statement by the government that the market has not prevailed and regulation has become necessary. So it's been used as an assistant to interpret the provision, that the intention behind the provision was to supply what the market forces were not able to supply. That's how this provision has been interpreted in the past.

The Chair: Are there no other comments?

Mr. Jean.

Mr. Brian Jean: I can't get past the word "directed", which is the improper use of a term that absolutely could bind and cause some serious ramifications in the future. I would beseech Mr. McGuinty to find something more palatable in this situation. This is a declaration of the entire bill, which is one of the most important bills that we have before us.

Regarding the word "directed" and the wording there, I've read it 50 times, I practised law for 11 years, and I cannot get it in my head what you are trying to accomplish with this. I've heard you talk about it a few times, and I've asked for an interpretation, but it doesn't come through the mike.

Mr. Peter Julian: It's very simple: regulation and strategic public intervention. And I think that's a normal definition of where the public intervenes.

Public intervention is directed to achieve economic, environmental, or social outcomes. That's no surprise; that's where public intervention comes into play. We may disagree on the appropriate mix of relying completely on market forces and having public intervention on transportation. We may disagree on the degree to which this might happen. You'd probably go more towards relying on market forces, Mr. Chair, and I would go more towards ensuring that there's a significant space for public transportation.

Regardless of where we sit on that spectrum, we would all agree that public intervention is directed to social, environmental, and economic outcomes. We might disagree on the degree to which public intervention should take place, but we would all agree that's where public intervention comes into play.

With respect to Mr. Jean, I'm saying that I understand what he's saying, but I don't think it's relevant to the exact clause that Mr. McGuinty has put forward. I think it's more a question of philosophy. But that's not what we're debating here, which is how to word that sentence and how the public intervention is directed—what it is directed to obtain or achieve.

• (1715)

Mr. Brian Jean: I'm worried about two things. First, I'm worried about the interpretation of this and the word "directed", and in fact the entire interpretation of this proposed section based on that.

Second, I'm worried about the uncertainty in the marketplace that it creates. What this sets up in the marketplace is very clear. We're looking for forces to invest hundreds of millions and billions of dollars, and they want some certainty in the marketplace. I am afraid of that uncertainty.

I would disagree with your analogy regarding me, Mr. Julian, because I am very interested in great transportation modes and the public investing in that. It's just how it's done.

I would like to hear from the department in relation to the word "directed", if they could give an opinion on that, because it's fearful.

Ms. Helena Borges: Normally the word "directed" is a very strong term. I'm trying to think of another term that would soften it a bit.

Mr. Ed Fast: How about the word "focused"?

Ms. Helena Borges: Maybe something like "focused" or "targeted" or "aimed" would be better. "Direction" has an implied terminology that somebody is forcing you to do something, and that is the way it will be interpreted.

We would still prefer to just get rid of "only", but if everybody else is agreeing to that...

Mr. Alain Langlois: Just as a comment, again, the drafter would have to review this, but legally speaking, I'm not sure you can direct a regulation. For the sake of discussing this motion, would just removing "only if they are necessary"...? We don't make a lot of changes in the French version. We still use the same terminology, *sont utilisées*.

For the sake of the discussion, would it be acceptable to Mr. McGuinty for us to basically say, "regulation and strategic public intervention occur to achieve economic, environmental or social outcomes", to maintain consistency with the French that is proposed in the motion?

Would that achieve what you're after?

Mr. David McGuinty: Mr. Chairman, I'm not hung up on the word "directed". This is not a direction in the legal sense of the word, with a solicitor-client document that's being approved by a solicitor. It's being used in the plain English sense of the word: "...those objectives are most likely to be achieved when...regulation and strategic public intervention are directed to achieve economic or environmental or safety, security or other social outcomes..."

That's not a direction. I don't think it's incompatible with the regulation. I think it's in the plain English sense of the word. It means that it's put in the direction of, that "regulation and strategic public intervention" are put in the direction of, are directed toward something, "to achieve economic or environmental or safety, security or other social outcomes".

I don't understand the concern with the word "directed" at all. It's the plainest English language word we could find.

Mr. Brian Jean: "Aim" is good.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. McGuinty, with respect, international law—

Mr. David McGuinty: "Aimed" is different from "directed".

Mr. Brian Jean: “Directed” has a specific connotation in legal terms. You’ve heard that from the expert here, from somebody we rely on. In international law, it has a specific definition with every international organization, and in Canada it does as well.

Under your particular interpretation of it, if you substituted the word “aimed”, it would have exactly the same meaning. Would you be satisfied with that?

• (1720)

Mr. David McGuinty: Mr. Chairman, aiming something and directing something toward something are not the same things at all.

Mr. Brian Jean: “Focus”?

Mr. David McGuinty: Not the same.

The Chair: Ms. Borges.

Ms. Helena Borges: Can we go back to first principles? Let’s go back to the language that was in there.

If we heard you correctly, Mr. McGuinty, your concern was related to “only if they are necessary”, correct? I think what our legal counsel has suggested would deal with that. We would propose to drop “only if they are necessary”. Reading it, it works well. It would say “regulation and strategic public intervention occur to achieve economic, environmental or social”, and then we add in the safety and security element. That way we’re not getting into any other words that may be misdirected at various intentions. We just leave the word “occur”. They occur, they happen.

The Chair: Monsieur Carrier.

[Translation]

Mr. Robert Carrier: Thank you, Mr. Chair.

The more we discuss it, the more I am in favour of this amendment. It’s a fact that the law of the marketplace exists, but in mass transportation, particularly at the regional transportation level, it’s important for a government or a regional administration to have a policy strategy. It gives greater importance to the measures and the strategies used by governments to reach the right objectives. That does not prevent the law of the marketplace from coming into play.

At some point, the government may help by investing in a mode of transportation when the cost is required by the law of the marketplace. The law of the marketplace exists, but the government strategy to implement a mode of transportation remains essential as well. That is what the amendment does. The law of the marketplace cannot exist alone. We cannot rely on the law of the marketplace.

In my region, for example, we need a train to the suburbs. We’re not doing it because there has been no government decision. There is the law of the marketplace, but that alone does not solve the problem. So that gives importance to the strategy. That’s why I will vote in favour of the amendment.

[English]

Hon. Charles Hubbard: Can you call the question?

The Chair: I have a couple of more comments.

Go ahead, Ms. Borges.

Hon. Charles Hubbard: Mr. Chairman, are we going to get it done by 5:30?

The Chair: If we’re just concerned about time, we can pass the entire bill, Mr. Hubbard. I’m listening to what people are saying, Mr. Hubbard, as you are.

I have Ms. Borges and Mr. Fast on my list.

Ms. Helena Borges: I was just going to clarify for Mr. Carrier that we’re not opposing that; we’re supporting that.

[Translation]

We support the principle that the government has to intervene, but the only thing we do not want to see is a directive word. We want to say it’s important but, if market forces do not allow that objective to be met, yes, the government has to intervene.

Mr. Robert Carrier: In the current text, there is too much conditional.

Mme Helena Borges: Yes, but that is what we are proposing.

Mr. Robert Carrier: It says “if . . . , if . . .”

Ms. Helena Borges: Yes, but we agree with eliminating them.

[English]

The Chair: Mr. Fast.

Mr. Ed Fast: I’m sorry to interject once more, but the word “directed” is problematic. I don’t think it’s as simple as saying that “directed” has a simple meaning. It doesn’t. Directed can mean channelled or aimed at something. It can also mean compulsory or ordered. They are two quite different concepts.

I had a look at the French. I don’t speak French. I’m studying it, but I’m not there yet. What does the word *utiliser* mean?

Ms. Helena Borges: It means use.

Mr. Ed Fast: That is quite different from “directed”. Is *utiliser* supposed to be the equivalent of “directed”?

Ms. Helena Borges: No, it is “occur”.

Mr. Ed Fast: Occur is not an active or mandatory thing. That’s why the word “directed” is wrong. The suggestion from staff that we use a different term is, I think, reasonable, Mr. Chair.

[Translation]

Mr. Peter Julian: Mr. Chair, I find that the French version does not reflect the English version. I wanted to raise this point because the two versions do not agree. The French version does not reflect what Mr. McGuinty proposed.

So, I simply wanted to intervene so that Mr. Fast would be aware of that.

[English]

The Chair: Go ahead, Mr. Fast

Mr. Ed Fast: The point, Mr. Chair, just to close, is that the word “directed” does not have one meaning, it has several meanings. Again, we’re inviting litigation in the future if we don’t resolve this difference of opinion.

• (1725)

The Chair: Mr. Jean.

Mr. Brian Jean: I have a point of order. I can't read the French, but I take exception to the fact that the French and the English are different translations of something that is so imperative in the declaration, and I'd like to see consistency in the wording, first of all, before we call a question on something that has such a great impact.

The Chair: Mr. Scott.

Hon. Andy Scott: I would suggest that we call the question. We've debated this.

Mr. Brian Jean: On a point of order, I would like to discuss that.

• _____ (Pause) _____

•

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: So that everyone understands us clearly, we support the French version of what was tabled by Mr. McGuinty. Understand clearly that we support the French version; the translation therefore has to be accurate.

When we vote, it will be on the French version of the text tabled. So if there has to be any adjustment, do it immediately, because we agree with the French version of the text that was tabled.

[*English*]

The Chair: Only for clarification, Mr. Laframboise, and I guess the will of the committee...I think it's important that we have both the French and the English for the amendments so that we can understand that we are talking about exactly the same things. I would suggest we stand this and continue this discussion with an early vote in the next meeting after we see the French and English translations, if that's doable. Okay?

Some hon. members: Agreed.

The Chair: With that, then, it is 5:29, and the committee will—

Hon. Andy Scott: You're not going to call the vote, then.

The Chair: Not until the next sitting.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.