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Chair

Mr. Merv Tweed

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• (1550)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Thank you, and good afternoon. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 29. Orders of the day are 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.

I don't think we need to introduce our guests. They are familiar faces around the table. When we left last committee, we were on clause 25. We had just carried an amendment submitted by Mr. Julian, and we are now dealing with the BQ-3 amendment. It's on page 19. Just for your records, I think in your amendment package it would be reference number 2459027.

So with that, I will go to Mr. Laframboise.

(On clause 25)

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): As you can see, the aim of this amendment is to add after section 85.1(5), subsections 6 and 7, which read as follows:

(6) The Agency shall, at least semi-annually, prepare a report to the Governor in Council through the Minister setting out the number and nature of complaints filed under this Part, including the names of the licensees against whom the complaints were made, and describing the manner in which they were dealt with and any systemic problems observed. The Agency shall include the report in its annual report.

(7) The Minister shall have the report laid before each house of Parliament on any of the first five days on which that house is sitting after the Minister receives it or, if that house is not then sitting, on any of the first 30 days next thereafter that the house is sitting.

Finally, we would like the air travel complaints to be the subject of an independent report. Also, a semi-annual preliminary report should be included in the annual report to be tabled in the House within no later than 30 sitting days.

[English]

The Chair: Thank you, Mr. Laframboise.

Are there comments around the table? Does the department have any comments on this amendment?

Go ahead.

Ms. Brigita Gravitis-Beck (Director General, Air Policy, Department of Transport): The department was prepared to table

a compromise motion on this particular clause with respect to the motion put forward by the Bloc.

[Translation]

We believe that the issue raised by Mr. Laframboise relates to the transparency of complaint information. Our proposal would make things clearer, while providing a level of certainty.

May we hand out the copies of our draft compromise?

[English]

The Chair: Go ahead, Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Mr. Chair, isn't it more appropriate...? There is no member moving the amendment—

The Chair: I was looking at Mr. Jean, who actually gave me a hands-up. I just wanted to make sure that this paper was circulated before Mr. Jean addressed it. I should have asked him first. I apologize for that.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I actually do have the paperwork, Mr. Julian, if it makes you happier. With all the intervention from me, Mr. Julian, I just feel like I talk too much, so I'm trying to keep my words limited to a reasonable amount.

Mr. Peter Julian: That gives me hope for today.

[Translation]

Mr. Brian Jean: Precisely.

[English]

The Chair: Just for your information, we're dealing with clause 25, the second amendment by the Bloc, BQ-3, and it's on page 19 in your act.

Am I safe in assuming that everyone has a copy?

Mr. Jean, I'll ask you to comment, please.

Mr. Brian Jean: First of all, Mr. Chair, it seems to me that the department came up with this compromise because it seems reasonable in the circumstances, given the Bloc's concern.

But at the same time, the department feels that it would be appropriate, and, quite frankly, the government feels it is appropriate, to have all the details in the same report and to do so on an annual basis.

If you notice the wording, it seems to be very consistent with the wording the Bloc has put forward. Indeed, I would suggest that if you read the three together, the Liberal amendment, the Bloc amendment...this one takes a position of compromise and more or less uses the taxpayers' money in an advantageous way, having a reporting function once a year.

In essence, it compromises with the Bloc and at the same time puts forward some of the issues that the department feels are not being addressed. Those include the substantial new cost that would be addressed if indeed we had all of the reporting features done separately. So it certainly takes taxpayers into consideration.

I would like to make the comment as well, Mr. Chair, that the performance indicators are not related to the air travel complaints. If you take that and look at what the Bloc has proposed and what the government has proposed, it seems like a reasonable compromise that actually, quite frankly, deals with all the issues raised by the Bloc and the Liberals.

• (1555)

The Chair: Mr. Laframboise, it is your amendment to start with. [Translation]

Mr. Mario Laframboise: If I understand what the parliamentary secretary is saying, you feel that it would be too much work and too expensive to table a semi-annual report. We can go along with that. [English]

The Chair: Mr. Jean.

Mr. Brian Jean: It's not just that, but we also feel that the one report has already been read, and people don't have to go and look for another report and expect it to be in this one report. So if the one report is done annually, they'll expect everything to be contained within that report.

Not only would it answer the taxpayers, but there wouldn't be any way to sort of hide what you're interested in getting, which is actually the facts. They would be included in the report done annually, and then people would expect them to be in there and not in some other report and not hidden away.

The Chair: Are there any other comments?

I am advised that because of the substantial changes, what Mr. Jean is proposing would not be seen as an amendment to the amendment. We would either have to have Mr. Laframboise withdraw his amendment to accept this one or put it on the floor for a vote and then bring this one forward as a stand-alone.

So I would ask Mr. Laframboise—

[Translation]

Mr. Mario Laframboise: That's fine then, I will withdraw it.

(The amendment is withdrawn)

[English]

The Chair: Do we want to deal at the same time, Mr. McGuinty, with yours, to see if it's encompassing? You're okay? You're comfortable with it?

Mr. David McGuinty (Ottawa South, Lib.): I'm certainly in agreement. Sure.

The Chair: So we'll withdraw your amendment, or do you want to talk about your amendment first?

Mr. David McGuinty: I'd like to, please.

The Chair: Yes, absolutely. If the committee is willing—because this amendment is going to encompass both the Bloc and the Liberals—I'd like Mr. McGuinty to put his comments on the record, and then if he's convinced that the new amendment is the right way to go, perhaps we'll go that way.

Mr. McGuinty.

Mr. David McGuinty: I guess the material difference here, Mr. Chair, is that what I am proposing introduces a tracking of airline performance indicators of the kind that are regularly tracked and disclosed to the American public under the FAA in Washington.

It adds to this part of the bill a higher degree of specificity in terms of what Canadians will receive either in the annual or in the original biannual report that was contemplated, including the percentage of on-time arrivals of flights, the amount of lost baggage, and the number of oversold flights that occurred in the preceding year, plus, of course, any systemic trends that were observed with respect to those matters. I see that the government has captured this intention in its wording here. At least the department has put it forward. I'm assuming that it has the government's acquiescence and support. It speaks also to the question of systemic trends.

I believe this would be important for Canadians. These seem to be the primary indicators they are looking for. I think we heard some of this from some of the witnesses.

I think it might also help assuage the concerns of some of the witnesses we heard from about the notion of the holus-bolus transfer of the air travel complaints commissioner into the agency, and I think it would drive up transparency and give Canadian consumers something for comparison.

I would think this is something that competing airlines would like to see. There's nothing like transparency in these areas to help focus the mind regarding how well you're doing running your airline company in a very competitive environment.

That was the thinking, Mr. Chair.

The Chair: Are there any comments?

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Mr. Chair, I sense that the only proposed paragraph in dispute here right now is proposed paragraph (c) in Mr. McGuinty's amendment.

Is that correct, Mr. McGuinty?

Mr. David McGuinty: You'd have to ask the clerk.

•(1600)

Mr. Ed Fast: Essentially, proposed paragraph (c) is the one that's at issue here. It focuses on the performance indicators. My concern is that it goes way too far in directing how airlines do their business. It's one thing to say we're going to provide an avenue through which complaints can be routed. It's one thing to say we're going to keep a record of what these complaints are and how they are resolved. However, because it uses the term "performance indicators", this particular paragraph is essentially imposing on government an obligation to actually set standards that typically are determined by the industry itself. The last thing we want to get into is trying to direct what is essentially a private business and tell them how to do their job. I think we're going down the wrong road in moving toward setting performance indicators, unless they are very general.

I would also note that the whole purpose behind moving forward with this bill was to provide some simplicity, so that the public has a way of accessing this information without being overwhelmed. A number of the amendments that have been proposed actually add complexity to the bill where it's not needed.

I would encourage Mr. McGuinty to accept the compromise that we've suggested. I believe it's reasonable. It's going to address his concerns, but it's not going to get into the business of trying to dictate how a business should be run. I'm sure the airlines don't appreciate us putting our fingers in, trying to mix it up in their business, and making those kinds of business decisions for them. Ultimately, it's the bottom line that's going to drive how they conduct their business. Presumably, for the most part, if the service isn't there, if the quality isn't there, people are not going to use the service, or not use it as frequently.

The Chair: I'm certainly prepared to listen to more debate, but I will just advise the committee of the order in which these amendments will be voted on. The government amendment would come next and, if supported by the committee, would render the Liberal amendment, simply because of the order the amendments are in.... The changes that are made in the first amendment by government would be impacted in the second one by the Liberals, so a vote for the government amendment would take the Liberal amendment out of play. I just want the committee to know that.

Mr. Jean, and then Mr. Julian.

Mr. Brian Jean: Mr. Chair, I just want to mention that because of the nature of this expenditure, indeed, I would suggest that it goes far beyond what is available. It might actually be out of order. I don't think we have to get to this point.

I want to address Mr. McGuinty's comments and say to him that the United States does do some semblance of reporting. My understanding, though, is that it costs in the multi-millions of dollars. In fact, it's over \$20 million a year to do such reporting. We have a thousand licensees in Canada, and I would suggest that economies of supply would not benefit us in any great degree even though they have more carriers there.

There's another issue that I don't want to see, and I'm sure Mr. Julian feels the same because of his comments before. When airlines are reporting on-time data and such things like that that are outside the market place, I'm worried about their compromise of safety. If they're in such a rush to be on time, such a rush to make sure bags

are done right, such a rush to do everything according to the book, I'm concerned, because I fly quite a bit, about 6,000 kilometres a week. I'm quite concerned—as Mr. Julian would be, I would suggest—about the safety aspect of this.

I would hate to see a compromise of, indeed, the reporting of the safety just to make sure somebody's job is saved or just to make sure they look good in the annual report that is done by Transport Canada. That is a concern, I think. It's a reverse process from what Mr. Fast was saying, but I think it is relevant. Indeed, because of the additional expenditures, I would suggest that it might even be beyond the ability of this committee to put forward such a motion as Mr. McGuinty has.

The Chair: Mr. Julian.

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

I'd like to thank Mr. Jean for his comments, although I don't think it's an either/or question in terms of choosing between disclosure for consumers and safety. There are two elements missing from the government's proposal. The first is the part that Mr. Laframboise has raised. It's a very legitimate one. It has the minister laying a report before the House of Commons. That's an important element, and with the government's compromise, we're missing that important component.

Second, as far as Mr. McGuinty's amendment is concerned, raising the performance indicators for each licensee, the percentage of on-time arrivals, the amount of lost baggage, the number of oversold flights, I think that's an important component of consumer protection. People need to know. In an economy such as ours, the more information that's available—not spin, not commercials, but actual facts—the more the consumer can make an intelligent choice.

These are things that are already tracked by larger carriers. I don't see it as a problem to have that kind of disclosure, because it allows in our economy free choice and full information for consumers.

I'm concerned about the government's amendment because there are two elements lacking. I'll leave it to Mr. McGuinty and Mr. Laframboise to state whether they feel those elements are important, but I believe they should be amended and re-crafted onto the government's motion so that we actually have a compromise that includes all the elements that have been brought forth.

•(1605)

The Chair: Mr. Langlois.

Mr. Alain Langlois (Legal Counsel, Legal Services, Department of Transport): To clarify one point, the government proposal will have to be tabled in the House. This mentions the agency's annual report. Under subsection 42(3) of the CTA right now, the annual report has to be tabled by the minister in front of the House each year. So that element is still maintained by the government proposal.

Mr. Peter Julian: When?

Mr. Alain Langlois: Each year.

Mr. Peter Julian: When each year?

Ms. Brigita Gravitis-Beck: In the first 30 days on which that House is sitting after the minister receives it, to both houses of Parliament.

[Translation]

Mr. Mario Laframboise: You will find it in another clause, but not in this one.

Ms. Brigita Gravitis-Beck: It is already in section 42 of the act.

Mr. Robert Carrier (Alfred-Pellan, BQ): It's implicit.

Ms. Brigita Gravitis-Beck: There is no ambiguity.

Mr. Mario Laframboise: And what if we were to request a second report? What we were asking for was a second report.

[English]

The Chair: Then what I will do is ask the committee if they are prepared to vote on the government proposal...

Mr. McGuinty, the way it's presented in the bill is that the government amendment precedes the Liberal amendment. If the government amendment is voted on favourably, then your motion is not inadmissible, but it's—

Yes, Mr. Julian.

Mr. Peter Julian: On a point of order, Mr. Chairman, this committee can choose to amend the government motion, incorporating elements from Mr. McGuinty's amendment.

The Chair: With a subamendment, absolutely. I had asked Mr. McGuinty to speak to his because the government motion was actually dealing with Mr. Laframboise's and Mr. McGuinty's.

Mr. Jean, and then Mr. McGuinty.

Mr. Brian Jean: I'm wondering if we could deal with the government motion first and then deal with Mr. McGuinty's, if there are any amendments.

The Chair: If we're going to amend the government amendment, I would think we'd have to deal with it collectively.

Mr. Brian Jean: It has to be friendly.

The Chair: I don't know if there is such a thing as a friendly amendment. I think anyone can offer an amendment to an amendment. It's subject to the will of the committee to accept it.

Mr. McGuinty.

Mr. David McGuinty: Thanks, Mr. Chair.

I appreciate Mr. Julian raising the operative paragraph being put forward by Monsieur Laframboise. I wasn't dealing with that, but I will take the opportunity to say that I did have a concern.

Maybe the government can tell us why Bill C-11 as presently written does talk about submitting it to the minister, who shall cause it to be laid before both houses of Parliament, when this draft proposal with compromise language does not. Is it merely a drafting —?

Mr. Alain Langlois: The current compromise refers to the agency's annual report. The annual report is already provided for in another section of the statute, section 42.

So the requirement to table the annual report in front of both houses is already included in section 42 of the CTA. By making a reference to the annual report, you're compelling the filing of that report to the House as per section 42 of the CTA. It's already implicitly included in that language.

Mr. David McGuinty: Are we then, in effect, cleaning up the language of Bill C-11—cleaning up this bill—anyway?

Ms. Brigita Gravitis-Beck: We're looking for compromise language in terms of the two motions that have been put before us on this particular clause.

• (1610)

Mr. David McGuinty: Can I turn, then, to L-3 again, Mr. Chair, and respond to some of the discussion on this?

My understanding is that the proposed amendment I put forward here in terms of performance indicators would not, I think, as Mr. Fast suggested, compel the government to set acceptable targets. There's nothing in the language here, in my view, that can be interpreted as saying that the government is going to set acceptable targets in these areas of on-time arrivals, amount of lost baggage, and number of oversold flights. I don't think it's the intent of this amendment, so I don't accept that interpretation.

Second, I think what this does is capture, in essence, what was already being reported by the commissioner, de facto, anyway, in part. But what it does is actually allow for the agency to report, in statistical fashion, to the Canadian people, to the travelling public, to consumers, what's going on with on-time arrivals or lost baggage or oversold flights.

Third, I would think that the government in particular, being a pro-business government, would want to see enhanced transparency and competition fostered through the bill. I would only think that if I were in the airline business, I might in fact embrace this, because I'd be looking to race to the top. I don't think I'd be afraid at all of hearing about on-time arrivals or lost baggage or oversold flights. I just don't see this as a particularly onerous reporting function. I don't see the security and safety implications at all.

As far as costs go, I don't know what it would cost to collect this information. I would think that airlines already have this information, and it would be quite easy, through the agency, to get it disclosed and report it in English or French in language that every travelling citizen or consumer in this country could understand.

The Chair: Go ahead, Mr. Langlois.

Mr. Alain Langlois: First of all, in terms of what the air travel complaints commissioner used to do in reporting, it's important to understand that the air travel complaints commissioner, when he was reporting semi-annually to Parliament, was only reporting on complaints received. He received, for example, 1,300 complaints a year. He used to report to Parliament on these complaints alone. So however many of these complaints dealt with baggage loss, however many of these complaints dealt with delays—whatever the subject matter may have been—he focused on these complaints alone.

Performance indicators would be industry-wide. So for every airline that lands or takes off in this country—I don't have the figures, but we surely have them—how many of them were on time? How many passengers, out of the millions of passengers who land or depart from this country, have lost their luggage? The agency doesn't have that information offhand, unless somebody complains. Most people, obviously, don't.

There are a number of complaints filed. I don't have the figure, but from my recollection, it's averaging about 1,300 a year, and you're now going to ask the agency, if this motion is carried, to report back not only on the ones who have complained but on every passenger who travels. That is far, far beyond what the agency currently does right now.

The Chair: We'll go to Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): With respect to that information, in paragraph (c), my understanding is, and I would stand to be corrected, is that that information is currently being gathered in the U.S.A. Do they not require that now in the U.S.?

Ms. Brigita Gravitis-Beck: There is a program in the United States that requires carriers to provide that information. That is completely separate from the complaints process. It has nothing to do with this particular section in the bill. We think it is totally misplaced.

Mr. Don Bell: If we wanted to get that information, where could we then appropriately request it? Where would you suggest that it go?

Ms. Brigita Gravitis-Beck: I'm going to suggest that it is the wrong place to put it—in this bill—because of the substantial requirements it would create administratively.

I would disagree strongly with the view that this is a very straightforward kind of thing. It is something that is not collected today. It is not information that is collected. It is not information that the carriers readily have.

Any time you put into place a brand new policy initiative—which is exactly what this would be—to ensure that this data is put into one place means that someone will have to set up a data system to store it, someone will have to set up parameters to ensure that apples and apples are being compared.

I think concerns have been raised that when you start looking at things like on-time arrivals, as they do in the U.S.... There is a very active debate in the U.S. about safety concerns when on-time data is posted, because it becomes a little bit of a race to make sure that consumers are happy in terms of on-time performance. There is a concern that perhaps that is starting to get to the edge, as costs are becoming a more and more significant factor in terms of safety considerations.

But I think the main argument is that this is separate, new, over and above anything the organization does right now, and it is not envisaged as a part of this bill.

•(1615)

Mr. Don Bell: If I understand your answer—and I think I do—you're saying it's not within the context of this bill as you see it, and further, you think that although they do it in the States, whether it's in this bill or anywhere else, it's not necessarily a good thing to do.

Ms. Brigita Gravitis-Beck: I did not say that it was not a good thing to do. I did say that it is inappropriate in this particular bill.

Mr. Don Bell: Okay, but if we wanted to have it somewhere...and that was my question. I interpreted your comments to mean that you thought, because of some of the factors you mentioned, that maybe the gathering of that information.... The other airlines have to do it in

the U.S. Why wouldn't we want them to do it in Canada so we could do a comparison?

Ms. Brigita Gravitis-Beck: You're asking a policy question. I'm not sure we're here to debate policy writ large; we're here to debate the bill—I thought.

Mr. Don Bell: The question I'm asking you, as staff, is that if this is not the right place to put it, and this committee wants to deal with it, where is the right place to deal with it?

Ms. Brigita Gravitis-Beck: I think, in the first instance, because it would be a brand new policy initiative, it would be something that the government would have to take under consideration and take to cabinet in terms of assessing the cost implications and the most appropriate method of pursuing it. That would have to go through the full policy debate in terms of deciding when, how, and through what mechanism.

The Chair: Mr. McGuinty.

Mr. David McGuinty: I just want to go back to something you said earlier, if I could, Ms. Gravitis-Beck.

You feel it's not appropriate, given the mandate of the agency now. You feel this is a public policy initiative that ought to have been—and if I'm misunderstanding this, please let me know—initiated by the government. You don't believe it belongs in this bill. You can't tell us where it might belong, in terms of this reporting requirement for Canadian citizens or consumers, and I think you went further and said that the airlines don't have this information.

Do you know that for a fact?

Ms. Brigita Gravitis-Beck: I'm not aware that carriers are keeping the information that you're proposing.

Mr. David McGuinty: So you can't tell us for sure whether or not the airlines have the information.

Ms. Brigita Gravitis-Beck: No, because again, it is a policy initiative that is outside the scope of this particular legislation. No, we have not made those inquiries.

Mr. David McGuinty: Okay, so there is nothing technically, then, to prevent this committee, if it wishes, to send a message to the people of Canada as parliamentarians to amend this bill in such a way, is there?

Ms. Brigita Gravitis-Beck: Again, I think the concerns that have been raised with respect to cost and scope would have been brought to bear in terms of making that kind of decision.

Mr. David McGuinty: So technically, then Mr. Chair, there's nothing precluding.... I think I should put the question to you and to the clerk, to your adviser, and maybe to the legislative clerks together. Is there anything that prevents us from considering this? Is it void, *ab initio*, as they say in law, or is it something ultra vires in this bill? Is there something I'm missing here?

The Chair: Mr. Jean.

Mr. Brian Jean: I think, Mr. Chair, with respect, I'd suggest that the proposal Mr. McGuinty has put forward is inadmissible on the basis of such a dramatic new cost that it would put on a bill that has no purpose...you know, it's not the purpose.

The Chair: Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: I think it is up to the law clerk to tell us whether or not the amendment is in order. Personally, I think it is. The problem lies in the fact that the analysis has not been done. I feel very uncomfortable voting under these conditions, since we have not spoken to the people from the industry. We did not ask them about the pros and cons and any problems that this could cause. That is very important, and I understand what you are saying.

I will have to vote against the Liberal amendment today, but not because it should have been discussed when we met with the witnesses. That would probably have led to another legislative measure. The Liberal Party, through one of its members, could introduce a bill to that effect.

I think this could cause some aggravation. When we read the text, it is not only a matter of responding to complaints. The text states: "(c) performance indicators for each licensee, including the percentage of on-time arrivals [...]". So this isn't only about complaints. Moreover, they are being asked to do more work than was expected. Therefore, whether rightly or wrongly, I don't feel comfortable with this.

It is probably a good idea, but I would tend to agree that this is perhaps not the right place for it, even if it is in order. The clerk will be able to tell us. Even with my limited experience, personally, I would say that it is in order. However, it would be unfair to spring this on the industry without having asked for their opinion.

• (1620)

[English]

The Chair: Mr. Julian.

[Translation]

Mr. Peter Julian: I don't agree with my colleague. I think the amendment makes a lot of sense. The airlines already use this indicator in their operations, and consumers should have this information as well. It is not necessarily a good thing to have this item in a report dealing with complaints against the airlines, but that is part of the mix. Consumers are interested in seeing the indicators.

[English]

And it is something that exists in the United States.

We're looking at a bill that essentially has revamped our national transportation policy. That certainly wasn't in part of the title of the bill; however, in our initial days of studying this legislation, we revamped in a very significant way the direction that our transportation strategy takes. So this is a very small component of the bill. It is related to airline complaints. It is something that is already gathered by airlines. I don't see it as enormous as some might pretend.

We are talking about an element of additional information that is provided in the report, and I think it's something that consumers would welcome. It allows them to make the comparison they need to make when they're choosing airlines, and that's something that is part and parcel of having that free flow of information that makes a difference when people choose a certain airline.

The Chair: Mr. Bell.

Mr. Don Bell: I guess the reason I'm asking this question—and this is back to Ms. Gravitis-Beck—is that the report that would be coming out of the intention of the motion is that we would get a number. It's 1,300, and you could say 600 for lost luggage or whatever it was for on-time. If you're running a business and if we're overseeing an industry that we regulate in this manner, it doesn't let us know what that means. It's almost like talking about the derailments that we're going to study. They say they're down 10%. Ten percent compared to what? The previous year they were up 200%. I don't know. So is it good? Bad?

If you would come to me and say there were 1,300 complaints... out of what? If there were only 12 complaints about late flights but they had 1,000 that were that way...and I appreciate the concern you had about airlines and the question of safety, of trying to be on time, of taking greater risks potentially, I guess. The other kinds of complaints that we would be dealing with—lost baggage, oversold flights—are indicators as to whether government should be taking any further action to service the public so that the public are well served in a regulated industry. So the number of complaints is interesting.

When I was in the business world, if we had complaints, we'd want to know...compared to how many? We've had three this week of a certain kind. How many transactions are we dealing with in our business and what does that represent? Is it one-hundredth of 1%? Maybe that's an acceptable number. If it turns out it's 10%, that's a different issue.

That was the reason for wanting to have the performance indicators or the baseline indicators that give us an indication as to the measurement of something. This represents a certain percentage. Then, from year to year, you can measure the trends, not just the fact that last year there were 1,300 and this year there are 1,400.

It may be that last year when there were 1,300, there were only one million flights and this year there are four million flights and it's only gone up 100,000. That's good. Or they've tripled and the flights haven't changed. It allows us to assess what's happening and whether we need, as government, as Parliament, and as legislators, to be putting more restrictions or guiding the industry.

• (1625)

The Chair: Ms. Gravitis-Beck.

Ms. Brigita Gravitis-Beck: I would note that in our compromised wording we have indicated that systemic trends will be part of what's observed.

So some of the comments you've just made, Mr. Bell, would be captured in the kind of information that we are ensuring that the agency will continue to provide as part of its annual report. In the context of the detailed information you spoke about, as I indicated, that information goes beyond the kind of detail and the kind of specificity that currently exists. Complaints are currently not assessed against on-time performance, not on particular standards of baggage issue treatment, but rather against the existing tariffs and the terms and conditions that each carrier has. That's the basis on which a complaint is assessed and the validity of the complaint is assessed by the agency. We can introduce performance indicators.

As I say, it's over and above the complaints element. In my view, it is totally inappropriate in this particular section because it does not deal with complaints. It's a separate issue. It may be a nice issue, but it's completely separate. The fact that there are performance indicators for each licensee...there are 1,600 licensees in Canada. So for those who feel that this would not be a substantial burden, both in terms of trees killed to produce the annual report or a burden on both respondents and recipients of the agency to consolidate, particularly to establish where it does not exist today.... I think those are the major concerns we would have.

The Chair: Mr. McGuinty.

Mr. David McGuinty: How many of those 16,000 licensees would you assume now already collect this data?

Ms. Brigita Gravitis-Beck: As we indicated, because this is not information that's currently assessed, I don't know the answer to that.

Mr. David McGuinty: Okay. Again, to be clear, this is not going to set an acceptable percentage by the government that a licensee would have to comply with. You understand the wording of this. It's not as if we're telling all 1,600 licensees that if more than 10% of baggage is lost, there will be sanctions, or there will be fallout effects, or there will be some kind of penalty. We're not saying anything of the kind.

We're saying Canadians, travelling passengers, and consumers might benefit from knowing how many on-time arrivals there were under a particular licensee. How many bags were lost under a particular licensee? How many oversold flights were there under a particular licensee?

I would think the travel industry would want to know that, whether or not it recommends a preferred carrier. I would think the airlines would wish this, because I think it would actually drive up the kind of reporting that makes them more efficient and more competitive in a globalized industry.

We have a minister pushing for open skies. It's a wonderful initiative that was launched by our government and it's being expanded. We're going to see more and more competition in this regard.

The thinking is that stepping off a bus in any city in this country, the average Canadian who has saved for several years to go on a trip across the country or somewhere else might want to know where some of these statistics lie. That's the simplicity of them.

Mr. Chair, it's not as if we're asking the government to set any standards at all. We're saying we'd like to know on behalf of Canadians. If they want to go to a website, they can double-click and find out. If the travel industry wishes to do so, it can find out. If lenders want to know, they can find out. If insurance companies want to know, they can find out.

I think it would enhance the transparency of the whole industry. Surely the government can't be opposed to transparency in this regard.

The Chair: Mr. Hubbard.

Hon. Charles Hubbard (Miramichi, Lib.): Mr. Chair, it rather disturbs me that such numbers are being bandied about. There are 1,600 licensees and 1,300 complaints, which would be about three-

quarters of a complaint from each licensee. I assume there are really only several major carriers in this country.

Overbooking is one of the problems. When you go to the airport and they suddenly say your flight is not available, it's a serious complaint. A businessperson in Toronto or in Ottawa could go to the airport for six, which I've had happen to me. They'll say the flight's not available because it's overbooked and they'll send you out the next morning. Those are the kinds of complaints we like to talk about.

I'm rather amazed too at the resistance our witnesses have to us as legislators putting it into the legislation. It doesn't seem to be the way that....

We have a Parliament in this country, with people around the table elected by Canadians. In Atlantic Canada we have a serious problem because it's literally a monopolistic company we're dealing with in terms of flying from here to home or flying back.

I think it's good evidence that we should put it into this legislation to make sure, as an agency, there is supervision of the service being provided. They get a licence from us. They should provide a satisfactory level of service to Canadians.

Why do we mention 1,600 licensees? Could the witness tell us why it's 1,600? How many are active in terms of getting complaints from those 1,600? Could I count them on one hand or two hands? Are there 1,000 different complaints from different licensees?

Alain, maybe you could tell me what we're talking about here. I assume there are ten major carriers at the very most.

•(1630)

Mr. Alain Langlois: I don't have the numbers of complaints per carrier, but if you look at the major five or six, most of the complaints obviously relate to these carriers.

I don't think the department has a major problem. I don't think the reluctance is with respect to the idea, although I understand the security argument. It's the scope of the work to be imposed on the agency.

The last time I checked, the agency had a budget of \$25 million for all of its employees and all of its activities. If we look at a similar bureau in the U.S., the Bureau of Transportation Statistics, has a separate budget and a separate organization. If I'm not mistaken, their annual budget is \$27 million U.S.

It's the amount of work that will be imposed on an organization, which probably doesn't have the resources to do it, that worries the department more than the idea. Although I again understand the safety argument, it's the scope of what we will be asking of the agency, above and beyond what they're currently doing, that greatly concerns the department.

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Hubbard asked the question I wanted to ask.

From agency reports, we're looking at about 80% to 90% of the complaints being with one or two carriers. Is that correct? We are looking at maybe half a dozen or a dozen carriers that are affected by complaints.

Ms. Brigita Gravitis-Beck: The complaints mirror roughly the market share that the carriers have in the Canadian marketplace at the present time.

Mr. Peter Julian: So it's 80% to 90% being with two carriers?

Ms. Brigita Gravitis-Beck: That's on the domestic scene, but it also includes complaints against foreign carriers as well.

Mr. Peter Julian: Okay, so what we are talking about is a handful of carriers. We're not talking about all 1,600 licensees. We haven't got to the point of whether or not Mr. McGuinty is going to be putting forward his motion. If he chooses to put forward that amendment, we could be looking at refining it to meet your carriers, or looking at licensees against whom complaints have been made, which would mean that the vast majority of carriers would not be affected by this. For the carriers that I believe Mr. McGuinty is looking to, which are the major carriers that already provide this information, already have it, already compile it, that information would be made public. That would mean that the consumers would be able to benefit from that.

So I'll wait to see where Mr. McGuinty goes on this, but I support the principle. I think all it takes is a little refinement to make this something that would be of benefit to this bill.

The Chair: Mr. Langlois.

Mr. Alain Langlois: When we talk about major licensees here, are we talking about Canadians?

Again, if you look at it from the domestic market perspective, you may have two or three carriers that hold 80% to 85% of the market share, but the agency gets complaints on an international basis too. They get complaints with respect to American airlines, European airlines, and Asian and Pacific airlines. What would be a major carrier?

Domestically, you may be able to come up with a standard, but on an international basis, how do you define what is a major carrier? You may have one complaint in respect of one carrier in Europe a year, but it's a major complaint. Where do you set the standard? Once you start creating exceptions for one carrier, where do you stop? Where do you put the limit? That's a concern I would have if we start putting the size of carriers—

•(1635)

Mr. Peter Julian: Since you've asked me the question, I'll answer it. The American airlines already compile this information, so we're not talking about a difficult or an onerous task for them. But I'll leave Mr. McGuinty to decide how to proceed on that.

The Chair: Mr. Jean.

Mr. Brian Jean: I would propose that we have the question, Mr. Chair. We've exhausted this for thirty minutes.

The Chair: All right.

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

The Chair: With that amendment carrying, amendment L-3 moves off the table.

(Clause 25 as amended agreed to)

(Clause 26 agreed to)

(On clause 27)

The Chair: On clause 27, we move to page 20.1 in your workbook, reference 2512384, amendment L-3.1.

I would ask Mr. McGuinty if he as the mover would speak to it.

Mr. David McGuinty: Thanks, Mr. Chair.

The import of this is to move from the wording “may”—that is, “The Agency may...make regulations”—to “shall”, in order to bring federally regulated carriers, who are increasingly selling directly to the travelling public, up to the Ontario and Quebec standards that we heard put to us by a selection of witnesses from the travel industries in Ontario and Quebec, and B.C. as well, if I recall. It provides some certainty and ensures that governments will follow through. I think we should be looking at pages 20.1 and 20.2 in combination.

The Chair: Unfortunately, we have to deal with them independently.

Mr. David McGuinty: We do, yes.

So that's basically what it deals with, Mr. Chair, in terms of advertising prices and transparency. It will bring federally regulated carriers up to the same standards as those of provincially regulated transport industries, as we heard from our witnesses, at least from Ontario, Quebec, and I think B.C.

The Chair: Are there any comments?

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: I am in favour of Mr. McGuinty's amendment. The clause in the bill is too fuzzy. The words "The Agency may, on the recommendation of the minister, make regulations, [...]" leaves too much room for uncertainty.

With this amendment that says "The Agency shall make regulations, [...]", we at least know where we are heading. So we will be voting in favour of the amendment.

[*English*]

The Chair: Mr. Jean.

Mr. Brian Jean: At first blush, I thought the same. Quite frankly, I liked Mr. McGuinty's amendment until I started to think about it, and I thought, what does “advertising in all media” mean?

If you would think about the ramifications of this, first of all, everyone here, I think, understands the law, and anyone can seek an order of mandamus compelling a minister to do something. And I think, Mr. Scott, as a former minister, you would agree that most of the legislation we have in Canada already deals with “may, on the recommendation of the Minister”. Most of it does, especially in circumstances such as this. As to “advertising in all media”.... There's no question that the intent of the government in this particular case is to regulate, especially in relation to air fares, especially in relation to the Internet and other things. But if you look at the legislation, including that, it could become a position, firstly, that would be very onerous for the government and that would in fact be one that would see civil liability flow to the Canadian taxpayer.

If you look at Ontario and Quebec legislation, I think you will find that it has the word “may”. I don't know that for certain, but I would suggest it would. Most of the legislation I see gives the flexibility to the minister, gives the flexibility to the government to impose that type of thing. As well, I think it safeguards the government in allowing them to pick the instances in which it is appropriate to have legislation, and in which it is not appropriate, and then they don't have to legislate in those particular instances. It does give the minister flexibility.

So the first thing I would suggest is that it should stay as is.

Certainly the minister is under an obligation to do so from a government perspective and also in accordance with the will of the House, but secondly, it gives him or her flexibility to determine which pieces of media need to be regulated and which don't need to be regulated. I think “media” is a pretty broad term.

So I would leave that with the committee for discussion.

I think I could probably provide a couple of compromises that the government would be prepared to live with, but I think if you look at the phrase “in all media”, it does leave us open to some orders of mandamus and, quite frankly, some civil liability that might not be looked at by this committee at this stage.

• (1640)

Mr. Alain Langlois: Of all the motions that were filed, from the legal perspective, there are two that really give me heartache. This is one of them and also the one that follows. They're the same in nature.

A regulatory power that's mandatory, to me, is a paradox. When you grant someone the power to regulate or the power to legislate, whatever it may be, it implies that you give the authority discretion to do it. A regulatory power is like a legislative power; it's a discretionary power to do or not to do something. If you don't trust that body to regulate, you don't give them the power. By nature, a regulatory power is a discretionary power.

If you look at all the acts that Transport Canada is administering right now, the most important ones, the Railway Safety Act, the Transportation of Dangerous Goods Act, the Aeronautics Act, deal with very serious matters. Mainly, they deal with security and safety. Nowhere in these acts is the regulatory power that is given to the Governor in Council a mandatory power.

I would submit to the committee that there's no more important matter in terms of public interest than safety and security; yet in those instances nobody compels the Governor in Council to actually regulate. Why would you force the agency, or the minister, as the case is here, to regulate? If you don't trust someone to actually regulate, don't give them the power. As a principle, that's usually how regulatory powers are given.

In terms of consequence, the main reason you don't force someone to regulate, as Mr. Jean said, is that as a government you open yourself to an action in mandamus. Somebody may claim that what the government, or in this case the agency, has done doesn't go as far as they believe it should have gone. An action in mandamus could be initiated against the agency to force them to regulate. That's one consequence.

The other consequence is in terms of civil liability. I'm in no way an expert on civil liability, but I've asked some people within the Department of Justice who actually do this kind of work. While it doesn't affect the duty of care that may be owed by the government to a third party, if there is a duty of care, it affects the second branch of civil liability as to whether there's been a breach in the standard of care that's owed by the government.

So it has implication in terms of civil liability. Also, it may have implications—I'm not saying it does—in terms of mandamus. Frankly, again, I go back to my first point: if no one trusts the person we're proposing to give the regulatory power to, then we should not be giving that power, in this case, to the agency.

The Chair: Mr. McGuinty.

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

I understand the mandamus concern, and I understand some of the other concerns. In fact, as Mr. Jean himself said, we should look at the provincial experience. I did.

Here's my problem. In 2002, three cabinet ministers from the Conservative government in Ontario, who are now in this government, brought in precisely this change. It wasn't done in the first year, it wasn't done in the second year, and it wasn't done in the third year. In fact, it wasn't done by the government at all. It took a change of government to actually implement the standard and to bring in the airfare for advertising clarity.

So my fear is precisely based on experience. I know the Ontario language does speak about “may”—the use of the word “may”—but it took three and three-quarter years to get it done by a separate government, not the one proposing it. So I think you can understand the concern.

This is of such importance to Canadians right now. There's a huge amount of confusion from a consumer protection perspective—huge. We're going into the biggest, most popular travel time of the year, and we're still seeing effectively fraudulent advertising.

We need to move on this, and we need to move on it quickly. With respect to assurances provided by the government, I don't know if they'll do it. I think this is something that requires us as legislators to act on and to act on decisively.

I cannot believe, Monsieur Langlois, that in the full panoply of legislative instruments that the federal government exercises that there are no other instances where a regulatory power is put in the hands of a minister without the word “shall”.

• (1645)

Mr. Alain Langlois: Very, very, very, few.

Mr. David McGuinty: But they do exist.

Mr. Alain Langlois: In exceptional circumstances.

Mr. David McGuinty: This is an exceptional circumstance. Let's tell Canadians what's going on with their airfares. Let's tell them. Let's get the job done.

The Chair: Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: I'm sorry, Mr. Langlois, sometimes I understand you, but in this case, you are comparing security and advertising, and I see a major problem with that. The two are not at all the same.

When it comes to advertising, we want the airlines to clearly understand that they must not underestimate the intelligence of the flying public. It's pretty straightforward. The clause states: "[...] may, on the recommendation of the minister, make regulations [...]". We have to put a stop to this. Enough money has been wasted to the detriment of citizens who have had problems figuring out how much their air fare would cost them. Enough is enough. It's time to quit fooling around, and, in my opinion, the Liberal amendment would put an end to all this nonsense.

If it is a first, then so much the better, Canada's Parliament will have instrumental in introducing this. Airlines will be forced to be transparent in their advertising. I think that the agency should get involved and there should be no way around it.

That is why the position that we share with Mr. Carrier is so simple. We don't want the airlines to continue to get away with it by saying that the minister does not, cannot, or did not want to act. They will not have any choice, since they will have to comply.

[English]

The Chair: Mr. Langlois, did you want to comment?

[Translation]

Mr. Alain Langlois: I simply wanted to explain that when I mentioned security, I was referring to the fact that the obligation to regulate is not incumbent upon the governor in council in legislation dealing with safety and security. There is no area that is more important than safety and security. Therefore, if the governor in council is not forced to regulate in an area as important as safety and security, then I don't know why we would do it in this bill.

Mr. Mario Laframboise: Mr. Chairman, there are so many things that cannot be predicted, when it comes to safety and security, that we must allow the minister to have the discretion to act. We have no way of knowing what could happen in the future. If something terrible were to occur, the minister must be able to intervene and introduce new legislative measures. I don't buy your example. If there is one place where we must maintain the word "may", it is certainly in security.

However, when it comes to advertising, the airlines are past masters in defrauding the public; I think it is out-and-out fraud. They try to entice people with low air fares that are not accurate. We are simply saying that the time has come to put an end to it.

That is why I am saying that you can't compare it to security. Next time you need an example, you will have to find another one.

[English]

The Chair: Mr. Jean.

Mr. Brian Jean: First of all, this is a government of action, so I can appease Mr. McGuinty by saying that we will get it done right away, but it certainly won't be done for Christmas, unless he's going to promise me that he can get the will of the committee to push this through before that time, before the House recesses.

But the other thing is, Mr. Chair, this might go beyond the jurisdiction of the federal government. Take, for instance, that Air Transat sells a lot of tours provincially. That is provincially regulated. How do we force them to do so?

Is this a situation where our legislation itself is going to speak to something that is beyond the powers of the legislators? I would suggest it is.

Indeed, and back to Mr. Laframboise's point, I think the media is also something that is changing dramatically over the years. Maybe it's not as important as safety, and it certainly isn't, but it's a situation where we have the web today. We have American carriers, quite frankly, advertising on the web. I think most Canadians don't understand that there is a difference between an American web address and a Canadian web address. Indeed, we're going to find that you're going to have Air Canada next to an American carrier, and quite frankly, it's going to appear that the Air Canada carrier is more expensive. Will it drive down the sales of Canadian air travel? It may indeed do that.

I think what this does is it gives the flexibility to the minister, first of all, to not impose on provincial legislation, and second, to change with the marketplace.

In the fact that we've put this in with the legislation, the government is dedicated to this. We understand that it's necessary and we will get it done. It's just a matter of having the flexibility in the future.

What I would like to do, Mr. Chair, with your permission, is pass out a piece of legislation that proposes an amendment that may be acceptable to the Liberals, the NDP, and the Bloc, if that's possible.

• (1650)

The Chair: Certainly you have the ability to make an amendment to the amendment. If that's what you're doing, then I would ask you to pass it out and proceed.

Mr. Brian Jean: What this does—

The Chair: I'll ask you just to wait until everyone has the amendment.

I'll get you to explain it to the entire committee, if I may. I'm waiting to get a legal report here.

What I'm going to do on the recommendation is that the first, on proposed subsection 86.1(1), will be dealt with as a subamendment to Mr. McGuinty's amendment. The second part we will deal with as a separate amendment.

Mr. Jean.

• (1655)

Mr. Brian Jean: I think, Mr. Chair, what this does.... Actually, the only change you can see is from Mr. McGuinty—and I'm not sure if he left it out of there because, of course, the Liberals have had ministers in this particular job I think 86% of the time that we've been a country. All it does it is leave the discretion with the minister, but it forces the agency to impose regulations on it.

So in cases where it's beyond jurisdiction or it's not in the public interest—which, of course, the minister is obligated to do—it's a compromise. Indeed, I think it's helpful.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I would like to come back to what the parliamentary secretary said earlier about websites and the like.

That was a real eye opener. I hope I misunderstood what you were saying. You stated that companies from outside Canada could run contests on the Internet and award prizes. We have no way of knowing if what they are doing is always legal. So far, so good.

What I am wondering is whether or not the government's open skies policy will lead to a similar problem. If that is the case, it would mean that an open skies policy would allow competitors to attract business here with false advertising, by quoting air fares that are not accurate, etc. I have a problem with that.

I hope that is not the case, otherwise I might be tempted to support Mr. McGuinty's motion and make the other companies operating in Canada play by the same rules. With the open skies policy, if the foreign airlines want to compete with ours, then I understand why there is some reluctance, particularly if questionable advertising could be used to undermine our domestic airlines. So the problem involves both advertising as well as the open skies policy.

[*English*]

The Chair: I have a list here: Mr. Scott, Mr. Julian, Mr. Fast.

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

On the issue of the fact that we use the word "may" in the case of safety—the argument being that safety is more important—why would we compel them in a case that is less important? I think there's a reverse argument here. The reverse argument is that we're satisfied that in the case of safety it is compelling enough in its own right, and it is a decision as to whether to compel the minister to act about something less important, if you could say that.

I believe you've made a great distinction, but I think you've made it backwards. I hope you understand what I'm saying. You would have to compel the minister to do something that he may not otherwise do. I simply don't believe there's any likelihood that he's not going to do it on safety, but he may not do it on this. That's the reason I want to make that point, because I think this isn't to somehow choose more importance here than there. In fact, because it's less important, it's probably less necessary to compel, that's all.

The Chair: Mr. Julian.

Mr. Peter Julian: In answer to Mr. Jean's question, "Who does this affect?", it's very clear in proposed subsection 86.1 that we're talking about "prices for air services within, or originating in, Canada". So the real question is whether we leave it to the minister's discretion or whether there is a mandate and an obligation to make those regulations. I think Mr. Laframboise and Mr. Scott have raised the point very effectively. There's no doubt the public wants to see regulations in this regard and there's no doubt that giving the option to the minister is a loophole. I think it's fair to say on this committee that what we want to do is close that loophole and make sure those regulations are made in the public interest. That's why I support Mr. McGuinty's amendment.

Getting back to the government's proposed amendment, which doesn't change anything, except, I imagine, to take a little bit of

discretion away from the agency, it continues to provide the discretion to the minister. I think it's missing the point: we don't want to give discretion to the minister. We want the minister to put together the regulations that should be required under this act. That's why the word "shall" is being proposed in amendment L-3.1., and I think that's where we should be going.

● (1700)

The Chair: Mr. Fast.

Mr. Ed Fast: Mr. Chair, I think we as a committee of mostly non-lawyers are missing what could happen if in fact we changed the word "may" to "shall". There seems to be an assumption here that if we use the word "shall", we're going to achieve all those objectives Mr. Carrier, Mr. Laframboise, Mr. McGuinty, and Mr. Hubbard have enumerated. I don't believe that's so.

If you had a minister who did not want to pass regulations, he could comply with the letter of the law by simply passing a benign regulation, and he could say "I've done my job". What it does is something much more dangerous. By changing the word "may" to "shall", it introduces ambiguity into the section. It raises the distinct possibility, as has already been mentioned by Mr. Jean and by Mr. Langlois, that we are going to be attracting litigation that none of us had anticipated or expected. It may raise expectations of the public that none of us really wanted to meet.

On the suggestion that we should be regulating the whole area of fees and how they're advertised, I think you're going to find unanimity at this table. That's why the section is even in here. But the moment we introduce the word "shall", those of us who have done drafting in the past know that it's an invitation to attract litigation that is spurious or that may actually impose costs on government that we never expected. I'm looking at the wording that was used in the initial draft, which is "the agency may on the recommendation of the minister".

My guess is that if you asked Mr. Langlois, he would probably tell you that it's one of the most common phrases used in statutory drafting because it's been interpreted. It does provide discretion. It doesn't compel a minister to do something non-specific. This does. If we use the word "shall", a member of the public could come forward, as has been suggested, and could say "Well, there's a compulsion to regulate. You haven't regulated the way I'd like to see it done, and I believe there should be an order of mandamus issued to compel you to act in my favour."

We're asking for litigation. We're introducing ambiguity, and we're not achieving what Mr. McGuinty had hoped to achieve, which is to compel the minister to regulate in a specific way. It's not going to happen.

The Chair: Mr. Carrier.

[Translation]

Mr. Robert Carrier: I would like to remind Mr. Fast that the amendment that replaces the word "may" by the word "shall" was moved by the government. You say that the word "shall" is ambiguous, but your government is the one that put it forward.

[English]

Mr. Ed Fast: That's understood, Mr. Chair. However, there's still absolute discretion in the name of the minister. The minister has the ultimate authority, and understood in the amendment is that the minister still has the discretion. For the minister, it's still "may"; it's not "shall".

It's a very significant distinction. I would be pleased to support the government's amendment. I would be pleased to do that, because it's not going to attract the litigation and the potential liability that the initial motion from Mr. McGuinty suggested. I'm serious.

The Chair: Mr. Langlois.

[Translation]

Mr. Alain Langlois: Mr. Carrier, you are right in saying that in federal legislation, a regulatory power is very rarely granted to anyone other than the governor in council. That is a rare occurrence. In federal laws, most of the regulatory powers belong to the governor in council. In some exceptional circumstances, they would be granted to the minister, and on a very rare occasion, as in this case, they are granted to a federal body.

Therefore, if the agency is forced to regulate, upon recommendation by the minister, the discretionary power that is usually part of the regulatory power would be maintained. Therefore, if the wording is changed to read "The Agency shall, on the recommendation of the minister, make regulations [...]", it would not affect the discretionary nature of the regulatory power. For that reason, the department sees no problem with it.

• (1705)

[English]

The Chair: Mr. McGuinty.

Mr. David McGuinty: Monsieur Langlois, if the wording in the bill as it now sits, or in the proposed amendment the government has put forward, goes through and there's a discretionary power vested in the minister, and if on April 1 the airlines begin a major lobbying campaign to stop this, the minister can stop it, correct?

Mr. Alain Langlois: Yes.

Mr. David McGuinty: Okay. Thank you very much.

The Chair: Mr. Jean.

Mr. Brian Jean: Monsieur Langlois, on websites in the United States, does the minister have any ability to regulate what they put on them? Do we as Canadians have any right to regulate the laws with respect to websites anywhere around the world? Indeed, do we have any right to regulate media outside of our jurisdiction?

Mr. Alain Langlois: Do you mean through Canadian law?

Mr. Brian Jean: Yes, through Canadian law, so it's beyond our jurisdiction?

Mr. Alain Langlois: To regulate this in the United States, yes—

Mr. Brian Jean: Are there any foreign services, foreign airlines, that originate in Canada? Is it an origination of them when they fly in and fly back? Under the blue skies policy that Mr. Laframboise indicated, isn't it possible that an American carrier that is flying in and out of Canada can actually advertise on a website in the United States, we have no ability whatsoever to regulate them, and they would have a competitive advantage that could cause us economic harm?

Mr. Alain Langlois: No. Under the current CTA, if an airline is going to advertise in Canada, it has to have a licence. Obviously, this requirement would be imposed not only on their licensee but also on carriers that originate in Canada. If somebody makes some publicity to sell a flight departing from Canada, he'd be subject to any regulation made under this section.

Mr. Brian Jean: What about a return flight?

Mr. Alain Langlois: If the flight is sold from Canada, then it includes the return flight, obviously.

Mr. Brian Jean: Does the department look at this as an economic problem? What is the logistic on it as to why you don't want it to be a shall? Is it just for the minister's discretion so he can impose and decide on the basis of economics?

Ms. Brigita Gravitis-Beck: The minister's discretion is there to take into account the policy considerations that should underpin a regulation to look at the context, domestic and international, to look at what other jurisdictions are doing, not just domestically but in terms of key partners, the United States in particular, and to make sure that Canadian industry is not penalized. It is also a measure that is necessary in terms of managing behaviours that may not be appropriate.

I find it interesting that some of the comments were made in terms of a recognition that perhaps there needs to be discretionary power when it comes to safety regulation because there are certain imponderables. Interestingly, again, as a policy wonk, I would say those imponderables also exist when it comes to making policy, and the agency is an administrative body that implements and follows through. It is not a policy body that assesses and evaluates in the same way that the department and the policy group there does. In the sense of the minister having the economic right, it would be fed by recommendations and advice in terms of the constituents and stakeholders, the needs, the requirements, the international context, and then the proposal with respect to a regulation.

The Chair: Mr. Julian.

Mr. Peter Julian: In answer to Mr. Jean's question, if a carrier originating outside of Canada but taking flights that originate in Canada breaks Canadian law, what are the alternatives the ministry has? They break Canadian law. They have a licence to operate, the flight is originating in Canada, and they are a foreign carrier, but they break the law. What are the tools the ministry has?

•(1710)

Ms. Brigita Gravitis-Beck: The Canadian Transportation Agency can investigate any complaints that pertain to licences it has issued. In the sense that a foreign carrier is not living within the parameters of its tariffs, its terms and conditions, complaints could be registered against that carrier and the agency would have to pursue and evaluate those. It has the mechanisms to impose either penalties or corrections.

Mr. Peter Julian: Such as—?

Ms. Brigita Gravitis-Beck: It depends on what the parameters are that the carrier is not living within. In some cases they may require compensation. In some cases there may be a penalty levied on the carrier. It depends on what the behaviour is and how it's regulated.

Mr. Peter Julian: And they could suspend the licence as well.

Ms. Brigita Gravitis-Beck: In an extreme situation, absolutely, they could suspend the licence.

Mr. Peter Julian: So we have all the tools for the minister to enforce any requirements or regulations we make. That was my point.

The Chair: Mr. McGuinty.

Mr. David McGuinty: I'd like to call for the vote, Mr. Chair. I think we've exhausted the debate. I'm not going to pass judgment on that, but I'd like to suggest that maybe we have.

The Chair: Mr. Carrier.

[Translation]

Mr. Robert Carrier: I would simply like to ask for a clarification before voting on Mr. McGuinty's amendment.

In the English version of the amendment, the word "shall" is used; we discussed that word at length here, but in the French version, there is no equivalent word "*doit*". It says in French "*L'Office régité, par règlement, [...]*"

Since the word "*doit*" doesn't appear, would the word "*régité*" have the same significance or is there a slight difference in meaning?

Mr. Alain Langlois: Both wordings are acceptable.

Theoretically, the word "*doit*" should not appear. It was used in the government's motion because it was probably taken directly from the English version. In proper French, the usual translation would be "*L'Office régité, par règlement, [...]*", it is an obligation to regulate. There is no discretion involved because it says "*régité*".

Therefore, the French version of Mr. McGuinty's amendment is correct.

Mr. Robert Carrier: Well, that is a point in Mr. McGuinty's favour.

[English]

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I know the question is going to be called in a second, but I'm wondering whether the other members of the committee would look at a compromise that takes into regard all the circumstances, that forces the minister to do so if he takes into

regard all the circumstances. It would be an amendment to Mr. McGuinty's motion. You're binding the hands of the minister.

Mr. Ed Fast: You'd never do that. You would not do that. In fact, I'm not aware that you did.

The Chair: Seeing that there are no other comments around the table, shall the subamendment proposed by the government carry?

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

The Chair: Shall the amendment, as proposed by the Liberals, L-3.1, carry?

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

The Chair: We will now move to amendment L-3.2. We're still on clause 27.

Go ahead, Mr. McGuinty.

Mr. David McGuinty: There is not much of a debate for me here, Mr. Chair. It's the same reasoning, the same argumentation, the same corrective action in the bill.

The Chair: Are there any comments?

Mr. Julian.

Mr. Peter Julian: I'm in favour.

The Chair: Seeing no comments, shall the amendment L-3.2, as proposed, carry?

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

(Clause 27 as amended agreed to)

(Clause 28 agreed to)

The Chair: Mr. Julian.

•(1715)

Mr. Peter Julian: Mr. Chair, given the importance of this particular clause, we—all four parties—have amendments. Given the time and the fact that I believe there is a presentation coming from our witnesses on this issue, I wanted to propose that we stand clause 29 and those amendments and come back to them later on in our deliberations.

The Chair: Yes, Ms. Borges.

Ms. Helena Borges (Director General, Surface Transportation Policy, Department of Transport): I would support Mr. Julian's proposal, but I'd like to remind the committee that the last time we delayed two clauses. One of them was clause 13, which deals with mergers and acquisitions, and the other one was clause 17, which was also part of the air section. If the committee is amenable, maybe we could dispose of those two options today and deal with the noise option on Thursday.

The Chair: With the direction and help of the front desk here, we put those two clauses at the end. It's simply to walk us through the process. We would put this one at the same position, which would allow for a briefing.

Is that reasonable?

Mr. Peter Julian: That's what I proposed.

The Chair: Is everyone okay with that?

Hon. Andy Scott: I think they're proposing to hold up the other two.

The Chair: I'm certainly prepared to entertain that. I'll ask if it's the will of the committee.

Mr. Julian.

Mr. Peter Julian: Mr. Chair, are we standing clause 29?

The Chair: I have an indication from the committee that it would be a good thing.

I'm now going to ask the committee if they'd like to bring forward clauses 13 and 17, which were stood at the end of the last meeting at the request of the department, or we can continue in the way the numbers are now. I'll look for a quick direction.

Mr. Peter Julian: My preference, Mr. Chair, is that we continue with the agenda you've set out.

As Mr. Laframboise reminded me, we had asked for a presentation on railway noise from our witnesses. I'm not sure how long their presentation would be, but we have ten minutes to perhaps go into it.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I would propose going back to deal with the two clauses that really relate to what we've already been discussing. I would suggest noise is going to be a huge issue for this committee, because it is so important to Canadians. We can deal with the other two clauses, and it would wrap up a huge portion of this legislation. It would seem to be appropriate, given the circumstances.

The Chair: Okay, if that's agreeable.

I would advise the committee that as we prepare to go back to the two stood clauses, due to some circumstances, not all people are going to be available tomorrow night for the infrastructure discussion. If we want to continue with this committee, we would certainly be prepared to continue on in that vein.

Do you want to hear it in French, *en français*?

Some hon. members: Yes, please.

The Chair: I was advising the committee that due to circumstances, not all people are available tomorrow night for the infrastructure debate that we want to have.

Is it the will of committee to continue with this, since we have allotted the time?

Hon. Andy Scott: Who do you want to get?

The Chair: I'm not sure of the names.

Hon. Andy Scott: But we don't have what we need.

The Chair: Yes.

Hon. Andy Scott: Okay.

The Chair: It was a timing thing. They've been available for the last two weeks, but it didn't work out.

I would ask the committee to consider it, and we could make that decision before we leave.

We're now going to clause 13.

(On clause 13)

The last time we were reviewing clause 13, we were in the middle of an amendment proposed by Mr. McGuinty. It's amendment L-2, on page 14 in your program, reference number 2512388.

Mr. McGuinty, do you want to briefly address this again?

Do we have a comment from the department on this clause? Was there information? I'm not sure if there was information to be gathered.

Mr. Jean.

• (1720)

Mr. Brian Jean: I'm not sure if I mentioned it last time, but the government is certainly proposing somewhat of a compromise, since we're so compromising: "that the minister shall make public" the guidelines on information relating to the public interest and that they shall be issued and published.

The Chair: If you're making that amendment, I would ask you to circulate it.

Mr. Brian Jean: I am. I indeed have a proposal here.

The Chair: We'll debate the subamendment and then the amendment.

Mr. McGuinty, go ahead.

Mr. David McGuinty: Mr. Chair, one of the reasons we pushed this aside and set it aside was that although it was sent out by you on November 2, 2006, members had not received the Competition Bureau's submission on Bill C-11. I think we distributed it at the last meeting. The clerk made copies available.

Before moving any subamendment, I'd certainly like to treat the merits of this serious brief that was put forward. This was put forward in the absence of knowledge of even Transport Canada officials. I'm not sure why it would happen, but it did.

It might be useful for us to examine some of the merits of the concerns raised by the Competition Bureau. It was the thing that struck me when I first read the M and A section, the mergers and acquisition section, of the bill.

The Chair: I am also going to distribute this for the committee—and I apologize, since it was just completed with the translation early this afternoon. Basically it's a review of the recommendations.

Because of the lateness, we may want to put this one on the back burner, so everyone can review it. It's a summary of the report that was presented, which I asked our analyst to do for us.

Mr. McGuinty.

Mr. David McGuinty: Thanks, Mr. Chair.

In the interest of time—we have roughly five minutes left this afternoon—I'm wondering whether we should put this aside or possibly even adjourn.

It's in the hands of the committee, but I would strongly suggest that each of us take a serious read of the entire brief. It would really help us understand what we can and cannot do here, in order to get it right.

The Chair: All right, if that's the will of the committee.

What is being circulated is a review and an overview of what was in that submission...for our next meeting.

Mr. Laframboise, do you have a comment?

[*Translation*]

Mr. Mario Laframboise: Yes. I read the brief that was tabled by the Commissioner of Competition. Personally, I am prepared to vote. However, if you wish to withdraw your amendment or if you would like to change it, then please go ahead. I am prepared to vote, I have no problem with it.

[*English*]

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: I will leave that to Mr. McGuinty. I would have preferred to continue with the clause-by-clause study. We are moving backwards.

I read the brief that was circulated, but, of course, this is a new motion by the government; this is something new. We should at least take a few minutes to compare the texts. We have a duty to do that.

[*English*]

The Chair: I look for the direction of the committee.

I accept Mr. Laframboise's point of view, that everyone was provided with the document. I've had an opportunity to read it and also ask for a review, so I felt comfortable with it.

Mr. McGuinty.

Mr. David McGuinty: Sorry, Mr. Chair, I haven't read this document by Allison Padova.

Was the request made—

The Chair: It was made by me.

Mr. David McGuinty: I understand.

Was the request made to distill or interpret what was put forward by Sheridan Scott?

The Chair: I would say distill.

Mr. David McGuinty: Thank you.

The Chair: Are there any other comments?

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: There seems to be a conflict between the position of the Competition Bureau and the position of the Canadian Transportation Agency or the Department of Transport. The government's proposal seeks to allow the minister to establish and publish guidelines.

Now what is the problem? Is it the great difference between guidelines, or between the requirements of the Competition Bureau and your requirements? Is the difference so great, or does the commissioner absolutely want her name in the report so that she can intervene and create work for herself?

• (1725)

Ms. Helena Borges: There is no difference. The commissioner says that we must prepare guidelines which must not be redundant

with the Competition Bureau's guidelines. We agree on that. We will prepare guidelines in consultation with the commissioner.

There are two aspects, two things to be examined: competition is covered by the Competition Bureau, and public interest involves the minister or someone designated by the minister.

We collaborate with the Competition Bureau to avoid redundancy, but even so, there still might be some. In her letter, the commissioner emphasized this. She noted that there might be a bit of redundancy but that the two parties are not looking for the same information. We need one kind of information whereas the bureau needs another kind of information. This is what we want to explain in the—

Mr. Mario Laframboise: Nonetheless, you have not said that you would prepare them with the Competition Bureau. There is nothing in writing that says that the guidelines would be prepared together with the Competition Bureau. You did not put this in writing, but I must put my trust in you. Is that what you are saying?

Ms. Helena Borges: Yes, that is it. Both organizations are involved in the process, namely, the Department of Transport and the Competition Bureau. We have to work together. The minister must personally consult the Commissioner of Competition before making a final decision.

Mr. Mario Laframboise: Why did you not say, for instance, in subsection 53.1(2.1): "The guidelines referred to in subsection (2), developed in collaboration with the Competition Bureau, shall include factors that may be considered to determine whether [...]".

Why are you not stating this? Why do you not want to add this to the text?

Mr. Alain Langlois: Because it is implicit. According to the current provisions, the Competition Bureau will give its input to the minister with regard to competition. The system is meant to allow the Competition Bureau and the minister to work together in determining the public interest.

Obviously, the legislation states that public interest is the standard whereby the minister must approve transactions. Public interest is a very, very broad concept that includes, of course, the other office concerned, because competitiveness is in the public interest. Thus, to avoid redundancy, provisions were made to allow the Competition Bureau to share its expertise with the minister.

All the provisions reflect an obligation on the minister's part, after receiving the Competition Bureau's reports, to consult the Competition Bureau to make sure that there are no conflicts, or, should there be any, to see how they can be resolved.

Do we have to state that when the minister develops the factors, he will have to take public interest into account and consult the Competition Bureau? In other words, is there any need to consult the Competition Bureau? We are aware of the Competition Bureau's criteria. They are enshrined in their enabling legislation.

Now obviously, the minister will try to avoid redundancy, but it is extremely difficult to add a provision excluding any redundancy with the factors that the minister develops. The Competition Commissioner even admitted in her letter that there could be conflicts between factors considered by the minister and factors considered by the Competition Bureau. However, the process has been planned with a view to avoiding a duplication of effort by the Competition Bureau and the minister.

Thus, it is clear that the minister in developing his factors does not want to repeat the requirements established by the Competition Bureau pursuant to the Competition Act. This is why it has not been spelled out that the minister must consult the Competition Bureau, and likewise, that the Competition Bureau must not consult the minister when the minister is studying competition issues in the transportation sector. We want to keep these two procedures separate, even if they involve a great deal of collaboration.

Mr. Mario Laframboise: Does the Competition Bureau have a role to play vis-à-vis the criteria?

Mr. Alain Langlois: The minister is under obligation to seek advice from the Competition Bureau.

Mr. Mario Laframboise: But can the Competition Bureau intervene regarding the criteria? Can it issue recommendations and so forth when making competition-related decisions?

Mr. Alain Langlois: Are you talking about the process of establishing guidelines and determining which factors are to be considered?

Mr. Mario Laframboise: Yes.

• (1730)

Mr. Alain Langlois: Absolutely.

Mr. Mario Laframboise: I am talking about compatibility with its own criteria.

Will the Competition Bureau have to study this law within the context of its own activities? Will it have to analyze these criteria when acting in competition matters?

Mr. Alain Langlois: The Bureau must apply the factors set out in the Competition Act.

Mr. Mario Laframboise: Very well.

Mr. Alain Langlois: As for the minister, he will apply the factors set out in the Canada Transportation Act.

Basically, what I am saying is that there can be a degree of overlap—it is impossible to have a cast iron separation between the two. Overlap is best avoided and the whole process, through the way in which the provisions are crafted, aims to avoid it.

Mr. Mario Laframboise: Okay, that is fine.

[English]

The Chair: I'm going to recognize Mr. McGuinty on the last point, but I do want to advise the committee that the friendly amendment that has been proposed, due to the differences in nature, will be considered as a separate amendment. We will be voting on Mr. McGuinty's amendment as a stand-alone and the government's amendment as a stand-alone, not as a subamendment.

Mr. McGuinty, please say a final word, and then I'm going to close it off. We'll then continue either tomorrow night or Thursday.

[Translation]

Mr. David McGuinty: I just wanted to very briefly respond to Mr. Langlois.

Mr. Langlois, if indeed the bill imposes an automatic obligation on the minister to consult with the Competition Bureau and work with it, why were you unaware of the memorandum that was sent by the bureau?

If indeed it is not clearly specified, and you were not aware of the Competition Bureau's concerns, then I understand Mr. Laframboise's call for greater precision in the exercise when decisions are made. That is exactly why I am pleased to be having this discussion—your department was not even aware of the bureau's concerns.

How then can you expect us to share your confidence that the two officers will in fact work cooperatively?

[English]

The Chair: Before I ask you to answer that, if you indeed want to, I would take the responsibility. It was sent to the clerk's office and then to me for distribution. If they didn't get it, I will take the burden of that. I'm not saying that doesn't dispel that there should be more conversation, but—

Mr. David McGuinty: Mr. Chairman, there's a separate matter here. I don't think you're responsible for this at all.

The Chair: It was sent through the office.

Mr. David McGuinty: But as legislators, we're trying to get a sense of confidence that the Competition Bureau is in fact working hand in glove with your department as we seek to vest...your wording, Mr. Langlois, was “extraordinary or unusual powers” in the minister when it comes to mergers and acquisitions.

For clarification, I wasn't implying that your distribution had anything to do with this. It had to do with the internal workings of the Government of Canada and the fact that the transport minister and the transport department weren't even aware that there were concerns from the Competition Bureau. They should have been brought to the transport department before they were even sent to you.

The Chair: For time, Mr. Julian, we are going to ask the committee whether we want to meet tomorrow night, Wednesday, to continue with clause-by-clause. We have the space booked and we have the time booked. Unfortunately, it won't be infrastructure. It will be this bill if we choose to meet.

Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: We have “extracurricular” activities tomorrow evening.

No, it's okay.

[English]

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Chair, we're respecting each of the party's activities, and if the Bloc has an event scheduled for tomorrow night, we shouldn't try to impose on them a committee meeting. That being said, we could certainly look at next week, perhaps adding some committee time to further it along.

I did want to say that the principle of standing clauses is something that—as the clerk has very correctly done and as you've done Mr. Chair—sees those clauses put to the end. I just hope we don't come back to this kind of scenario where we throw out clauses that have been stood. We've only stood three out of half of the bill, and we are halfway through. I would prefer that when we stand them, they remain at the end and we work through clause by clause. I think that makes more sense. We could have gone through ten clauses because there were no amendments to them in the time it takes to come back a second time to clause 13, and we'll be coming back a third time. I would hope that we would stay with that principle and not be forced off track.

The Chair: That would certainly be, as it was today, the will of the committee.

With that, Mr. Carrier, you have the last comment.

[*Translation*]

Mr. Robert Carrier: To follow on from what Mr. Laframboise was saying, we will be at the Bloc Québécois' Christmas party tomorrow evening.

Would it be possible to move our meeting to Wednesday evening?

• (1735)

[*English*]

The Chair: I will certainly contact the department again in that regard, but as it stands right now, tomorrow's infrastructure meeting will be cancelled and we will reconvene on Thursday at 3:30 to continue clause-by-clause.

The meeting is adjourned.

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