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

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**EVIDENCE**

**Wednesday, May 2, 2007**

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**Chair**

**Mr. Merv Tweed**

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## Standing Committee on Transport, Infrastructure and Communities

Wednesday, May 2, 2007

• (1535)

[English]

**The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)):** Good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities. This is meeting number 48 and we are meeting pursuant to the order of reference of Tuesday, November 7, 2006, Bill C-6, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts.

Joining us today, from the Canadian Union of Public Employees, we have Mr. Richard Balnis; from Dax Air Inc., we have Kirsten Brazier and Gerry Whalen; and as an individual, Mr. Ken Rubin.

I think everyone has been notified that we open the process with commentary. You have about seven minutes. We'll do all three and then we'll move around the table for questions from the groups here.

With that, I'll start with Mr. Balnis.

**Mr. Richard Balnis (Senior Researcher, Air Canada Component, Canadian Union of Public Employees):** Thank you for the opportunity to appear today on behalf of the airline division of CUPE.

You should have all been given a slimmer volume, which is our complete brief, in a tumble edition. The red side is English; the blue side is French. You also have two fatter companion documents in support of our brief. The red is the English only; the blue is the French edition.

The airline division of CUPE represents about 8,500 in-charge flight attendants and flight attendants at six airlines. Along with pilots and our passengers, we are among the first victims when our safety systems fail. Our brief is extensive. I would simply like to give you a quick overview.

Bill C-6 constitutes a revolution in how aviation safety will be addressed in Canada for years to come, as shown on page 1 of our brief. As summarized on pages 2 and 3, we have serious concerns about Bill C-6 and SMS.

We brought these concerns directly to Minister Cannon on November 7, 2006, urging him to retool Bill C-6 for safety before proceeding further. If these key amendments are not made, Bill C-6 cannot proceed, in our view. Our first preference is that the government actually withdraw Bill C-6. But if the government insists on proceeding, we urge you in the strongest possible terms to make the needed amendments to ensure that Bill C-6 is indeed viable and effective legislation that will actually improve aviation safety. Let me explain why this must be done.

First, we address the changing role of Transport Canada's regulatory oversight in an era of SMS in pages 4 to 7 of our submission. Despite efforts to discredit Justice Moshansky and the inspectors' unions, TC oversight of the aviation industry is changing. It is being dismantled today well in advance of aviation SMS being in place. We are only in year two of a three-year implementation plan for large air operators. We are five to twenty years away from when SMS will be fully functional. Professional and dedicated inspectors are there for concern. So is Justice Moshansky. So are flight attendants and pilots.

It is wrong to believe that Bill C-6 compels or requires a diminished role for Transport Canada's oversight and inspectorate under SMS. Rather, it is what the department thinks it can do in the absence of effective parliamentary scrutiny and legislative requirements that is the real issue. We believe we have a fix for your consideration. It is found in our recommendations 1 and 2 on page 7. We offer them for your consideration.

We next address, on pages 8 to 9 of our brief, the myth that the current regulations will remain untouched under SMS. This is the so-called regulatory box the government has been telling you about, the rock upon which the SMS castle is built—it's my fist here. The myth is that SMS is an additional safety layer, the umbrella over my fist. It's supposed to be the hand over the fist. This is too simplistic a view, for two reasons.

First, as the department has already told you, this regulatory box is undergoing tremendous change. On page 8 of our brief, this box will become more performance-based, vaguer, more flexible, and open to interpretation. We give you one recent example on page 9 and in tab 1. This is giving more discretion to air operators and others to decide how they will be safe. The rock is crumbling.

Secondly, what the government and the department have not told you, but witnesses like the Canadian Airports Council have, on page 9, is that the regulatory box will also get smaller. Transport is withdrawing entirely from large areas of setting the safety rules. The rock is disappearing. As the box shrinks, the actual level of safety will be determined more and more by the airlines themselves, using SMS. That's why they are so enthusiastic about it. When we move to the theory, as you can see on pages 10 to 13 of our brief, and as my fist becomes smaller and vaguer, SMS takes over more and more how the industry will run itself. And then the paper over the rock, as in the child's game, and we all know who wins.

That's why you, as our elected politicians, should be concerned. In our view—and we've presented you documents so you can look at it for yourselves, in tabs 2, 3, 4, and 5—we believe Canada's SMS regulations explicitly transfer the determination of the level of safety to the air operator who will decide how to manage their risks, including the level of risk they are willing to accept in their operations. This will be a different risk threshold than one set by Transport Canada.

● (1540)

Transport Canada's speaking points say that SMS is not a deregulation of safety. But it is precisely that, because it has transferred the determination of appropriate risk levels from Transport Canada to the airlines, or from the public interest to the determination and interests of private shareholders.

Beginning on page 12 of our brief, we can show you examples. Fuel requirements are being reduced and replaced with a risk assessment. Management can now use risk assessments to make a conscious decision not to do anything. The level of acceptable risk is being redefined upward.

We give several simple examples. Little flight attendant injuries are no longer being investigated. DEET protection against malaria, once provided to flight attendants, has now disappeared as a result of a management-only risk assessment. That airline has accepted the risk that its flight attendants would get malaria as a cost of doing business.

Please read Justice Moshansky in tab 7, as cited on page 13, where he talks about the emergence of a more permissive, higher-risk-taking environment that contributed directly to the Dryden crash.

Safety costs money, and sometimes managers won't and don't spend it. And they won't have to do that with the elevated risks under SMS.

Can you do anything at this stage, as Parliament? I have here a brochure from Transport Canada. It shows their implementation plan for SMS. It's all in place by 2010, regardless of what you do. The only way you can get Transport Canada to listen is to amend Bill C-6 to make its SMS provisions stronger.

Beginning on page 15, we offer recommendations 3 through 11 to improve the SMS.

Moving on, and mindful of my time and the patience of the chair, the concept of designated organizations has rightfully attracted your attention. We provide our analysis on pages 17 to 19 of our brief. We offer two options for the committee's consideration. But after speaking to the author of tab 10, which is the helicopter study, on Monday, we are learning that whatever Parliament does with this clause, Transport Canada thinks it can delegate these powers without even having to use this designation provision and even if this clause is removed entirely by you. We'll answer more in the question period.

We are also concerned about the encroachment of SMS on our rights under the Canada Labour Code. There is a long analysis on pages 20 to 26. We believe you can make the two pieces of legislation work together. As shown in tab 11, Transport Canada and

HRSDC have found the way to do that. Unfortunately, ATAC and the air operators want you to amend the legislation to prevent this.

When it comes to occupational health and safety, flight attendants are beginning to recognize that SMS means “selling out my safety”. We urge you to look at recommendations 17 to 23 to help fix this problem. And on pages 27 to 29, we ask you to look at the issues of immunity and confidentiality. You must disentangle them.

Finally, you must address whistle-blower protection. On page 32 of our brief, Transport Canada cites CAIRS as their answer. CUPE recently used CAIRS to report the operation of an aircraft with less than the legally required number of flight attendants—for us, a serious issue. The report was merely acknowledged. There was no further response or assistance provided. It looks as though the issue was simply given back to the violating airline. There have now been two or three more similar incidents there.

Even if CAIRS worked, it is only half the story. We need the equivalent of U.S. FAA whistle-blower protection, and I have the language here.

I could go on, but I have tried the chair's patience.

As shown on page 42, we need your assistance in the following areas to amend this legislation. We need amendments to Bill C-6 and existing SMS practices to correct deficiency; we need to add whistle-blower protection for employees; we must rescind or limit the powers to self-regulate; you must coordinate Bill C-6 with part II of the code and other legislation; you must revisit excessive confidentiality and secrecy provisions; you should restore our right to flight time limitations; and you must maintain proper safety oversight.

We have offered you 37 recommendations, consolidated at the end of the brief.

Thank you for the opportunity to appear and to present our views. We look forward to your questions.

● (1545)

**The Chair:** Thank you very much.

Ms. Brazier.

**Mrs. Kirsten Brazier (President, Operations Manager and Chief Pilot, Dax Air Inc.):** Thank you all for the opportunity to speak here today. We must apologize if it seems we have little documentation to present, for we only recently found out that our request had been granted.

What we offer you is our own experience and frustration in dealing with the present regulatory system.

My name is Kirsten Brazier, and this is my partner, Gerry Whalen. Together we own and operate Dax Air, an air taxi service operating under CAR 703 and an approved maintenance organization. We presently operate a Beech 18 on floats. Our work involves tourism, service to the northern communities, and transporting trades and utility people to remote areas.

We are representative of many small operators located across the country who do similar work, and as we stated in our letter to the committee, we are the most underrepresented and the most affected by Bill C-6.

Prior to starting our company, both my partner and I have had experience in operational management positions, so we are both familiar with navigating through and understanding the regulations. While we feel the CARs were a hand-me-down from 705 and not specifically tailored to 703, the regulations in general are, for the most part, fair and logical. It wasn't until we began the process of certifying both our AMO and air operation, and later doing work for other companies, that we began to see major discrepancies between the CARs and how they were being interpreted and applied by Transport Canada.

In certifying our own company, we wanted a clear and concise set of manuals that met the CAR, the standard we must meet in order to operate. Because the manuals are legal documents, we did not want the extra liability and confusion from unnecessary policies and procedures. We feel there is no such thing as a lesser or greater standard in the CARs. One either meets or does not meet the standard.

Other operators were interested in our approach and asked for our help in ridding themselves of unnecessary and excessive policies and procedures in their own manuals.

There seemed to be a general confusion about what the actual standards were. We discovered that individual inspectors in various regions had different interpretations of the regulations and accordingly had differing policies to deal with these interpretations. We discovered that the regulations are not being applied equally and fairly across the system.

When we tried to resolve our concerns as they came up, we discovered a complete lack of due process within Transport Canada. The existing complaint resolution system is ineffective, inaccessible, and lacks an independent arbitrator. We also discovered that there is no protection in place for operators, who are often bullied by individual inspectors, or in some cases departments, to meet individual and regional policies not required by law.

When we started our company, we both agreed we would do our best to abide by the standards and operate safely and responsibly. We knew we were going to have a tough time because of the state of the industry we are in, where cutting corners is common practice. We are all faced with rising costs and a declining market, so to compete, many operators continue to overload their airplanes, cut rates, and push weather, basically getting more done for less.

While this "getting more done for less" philosophy may be attractive to the customer who must pay for the services offered, what the customer doesn't understand is the risk they are taking by supporting this attitude. This only serves to tighten the market further.

As an example, in our second year of operation, Dax Air was faced with this type of choice when one of our customers gave us an ultimatum: either carry the loads he wanted or he would find someone else who would. Since we refused, he found another operator.

We find ourselves in the position that many others have come to: either cut corners to survive and compete or go out of business. While we expected a few challenges in establishing our company and operating principles, we also expected that our doing-it-right approach would be supported by Transport Canada. We have found that this is not the case.

In trying to understand why these conditions exist, we began reaching out to other operators across the country; we discovered there were similar problems in many areas and that others were concerned that nothing was being done. Most of these operators are afraid to come forward for fear of reprisal from Transport Canada. In speaking publicly about these issues, we too are afraid of reprisal, based on our experiences with Transport Canada.

Speaking as a CAR 703 operator, we feel that a safety management system is a valuable business tool. However, given the state of CAR 703 as we described it, we feel there are root problems with 703. Until they are rectified, the air taxi is not ready for SMS. The culture of safety cannot be legislated.

● (1550)

Our research has shown that Transport Canada is using sanitized statistics to support their safety claims, as we pointed out in our letter of April 22. Transport Canada is telling us we have the safest aviation system in the world. They said the same thing ten years ago, in the SATOPS final report, yet many of the same issues discussed in that report continue to exist today.

If we are really concerned about safety and truly want to become the safest country in the world, then we need to start sharing information with a view to discussing and learning from our mistakes. Instead of sanitizing and restricting safety information—such as the service difficulty reports, Transportation Safety Board accident and incident reports, and the CADORS—we need to make this information more accessible in its entirety with industry so we can learn from it.

At present, this information is difficult, if not impossible, to obtain from Transport Canada and the TSB, who continuously cite privacy issues as the reason not to make the information available. As far as we're concerned, the day an operator receives the right to operate and provide services for the public, they become accountable to the public, to the government, to the industry, and to themselves for the way they operate.

In closing, there are many issues we would like to discuss to support our claim, but time being a limiting factor, we have prepared the preceding statement as an issue of priority that we as a 703 operator feel must be addressed. If given a set of clear and concise regulations to follow, if given fair and equitable application of existing regulations by Transport Canada, the industry will, we feel, become safer by default.

Thank you.

**The Chair:** Thank you, Ms. Brazier.

Mr. Rubin.

**Mr. Ken Rubin (Public Interest Researcher, As an Individual):** Thank you, Mr. Chairman and members of the committee.

As a public interest researcher and frequent access user, I've spent 25 years battling to get various air safety reports made public, including going all the way to the court of appeal.

My concern is that air safety public reporting is being ambushed and essentially eliminated under Bill C-6. The reasoning is that confidential reporting is needed under a safety management system and therefore officials with airline companies believe they must end having publicly available inspection reports done. This secrecy focus must immediately be challenged and changed in the interests of the public and the travelling public.

If left intact in Bill C-6, the effect is public mistrust in air safety. There will be no more publicly available Air Canada, or WestJet, or any other audits. It will also skew Transportation Safety Board accident reports, and, possibly worse, safety errors, because there is too close a reliance on a confidential reporting relationship between airlines and Transport Canada.

The public's right to know about air safety, from repair maintenance to engine problems to human error, is in jeopardy. Fliers must feel safe on planes and be able to choose the best carrier based on up-to-date reliable information.

It is most serious that Transport Canada opts for a veil of secrecy in our skies, airports, and repair facilities.

Bill C-6, clause 43, places air safety reports in a permanent secrecy category via schedule II, section 24, of the Access to Information Act. It's being placed in the same category as tax information. Even cabinet confidences are only 20 years, and security intelligence information doesn't get exempted forever.

There are exemptions, there are public interest overrides, there are injury tests, but not in this case, and that's wrong.

Section 2 of the Access to Information Act says that the laws of this country are extended to try to open up and disclose information. Section 24, things within the act, eliminates any possibility of ever getting that information.

Part of the study of the accountability act, on which I was a witness, had this very discussion of whether we should have a public interest override section within the Access to Information Act, and even whether section 24 should be abolished. It wasn't, and this is going to be the end result if you go down this path.

Already, the effect of the SMS system is felt on access because I've already been denied the first SMS report on Air Transat done in 2003. I got documents, which were dated November, from Transport Canada. They said that as of then there were already 200 secret SMS investigation reports that the public will never get to see, however serious some of the infractions may be.

I noticed in the committee that the minister and officials came to you and said there were only 100 files. Where are the hundreds of SMS reports? When are they going to be made public?

Dozens of regulatory audits were stopped in their tracks, which I or any member of the public could have applied for, but no, they're gone because they've now been transferred, in part, to SMS. This is a power play of the worst order.

It all sounds familiar to me, though, because back in the 1990s, Transport Canada tried to implement a confidential reporting system in partnership with airlines. But when I discovered that from 1990 to 1994 they had done dozens of these studies with the industry, they immediately, once I applied for them under access and I had given the clerk the cancellation order, cancelled them in October of 1994.

Now Transport Canada has ordered that all public regulatory audits be cancelled so that work can "proceed in confidence".

The gravity, Mr. Chairman and members, of the changes in Bill C-6 can be further illustrated by another past experience. Transport Canada tried to hide from me another confidential air safety post-accident safety survey for which I had to go all the way, for seven years, to the Federal Court of Appeal, the Nationair report where 14 Canadian crew members and 240 Nigerian Muslim pilgrims lost their lives in Jeddah, Saudi Arabia, on July 11, 1991. That crash occurred after takeoff and occurred because of an improperly serviced DC-8 Nationair plane.

Transport Canada at the time argued against me that revealing the Nationair report would affect the trust relationship with all airlines and any chance in future of getting confidential materials.

•(1555)

Well, that report, when it was revealed—and I shared it with next of kin and the media—catalogued many serious past maintenance and other deficiencies at Nationair. It also revealed that there were problems known to the regulators well in advance of the crash.

Under Bill C-6, I would never have gained access to the Nationair report. Under Bill C-6's sweeping confidentiality reporting systems, I would never get the reporting system being promoted. I would never get the cockpit tapes from the Swissair crash off the Nova Scotia coast, or any other black box tapes, so crucial for understanding what happened.

There are four fatal myths associated with this 100% confidentiality SMS reporting system that the Harper government and many in the airline industry seem, for some reason, to support, when it's going to come crashing down on them too.

One is that the airline industry will always report and always tell the truth via a confidential voluntary reporting system. I think it was Justice Dubin who destroyed that myth many years ago.

The second assumes that Transport Canada itself will maintain a healthy distance from the industry and will be diligent and always do its enforcement job in secret.

The third myth assumes that there's no need for whistle-blowing provisions because the reputed positive benefits of an immunity-based industry-government cooperative reporting system will eliminate any need for people to tell the truth.

Finally, there's a bit of a myth that there'll be more substantive records created through Transport Canada's changing to this confidential system. It's going to be like check-offs of performance standards, and not what you think is going to be the real substantive material.

The underlying problem, by way of conclusion, is that Transport Canada's minister, under the Aeronautics Act, has a dual role: one part is to protect the public when it comes to air safety and one part is to promote the expansion and commerce associated with the airline industry. In my opinion, the transport minister's primary function under Bill C-6, which should be revised, should be on air safety.

Regular, much improved, substantive, and regular air safety regulatory audits need to be done and released in a timely fashion. Air safety reporting by the industry must be transparent, must be made publicly available in objective government summary form, and must be subject to coverage under access legislation. Whistle-blowing protection guarantees must be incorporated too, under a revised Bill C-6.

Transport Minister Lawrence Cannon cannot claim that he and his officials, as they said in front of the committee, are simply adding, via an industry-government confidential non-punitive SMS reporting system, just another protective layer to improve air safety and are implementing a system far removed from airline self-regulation. Rather, they are attempting to circumvent public scrutiny and abdicating their public regulatory responsibilities.

I wouldn't feel this strongly if I hadn't got the Air Ontario regulatory audit a month after the Dryden air crash, which showed what a poor maintenance record that airline had. If that had been reviewed beforehand under access, maybe those people wouldn't have died. But you know what? Under Bill C-6, I'd never get that kind of stuff.

Bill C-6 needs to be seriously amended to bring in proactive disclosure policies and tougher air safety inspection and enforcement reporting to Transport Canada.

Thank you, members.

•(1600)

**The Chair:** Thank you, Mr. Rubin.

I'll go to Mr. Volpe, who is going to share his time with Mr. Valley.

**Hon. Joseph Volpe (Eglinton—Lawrence, Lib.):** Thank you very much, Mr. Chairman.

Thank you very much, witnesses.

It's certainly a different approach that we have to the issue today. I would summarize it by saying that you've come as close as anybody to saying that the entire exercise is one effort at misleading the public and this committee, but those are my words; I know they're not yours.

I'm going to split my time with Mr. Valley, but I want to ask you, Mr. Rubin, if this bill would be acceptable if the privacy provisions were eliminated. That's number one.

Second, I know you've said this already, but I just want to make sure I heard you correctly. You are skeptical, to say the least. Do you

not believe that a voluntary reporting system will enhance a culture of safety and reporting that currently does not exist?

**Mr. Ken Rubin:** I remember I did cross-examine one of the previous Transport Canada officials on that subject. So this is not something new. I certainly agree that by way of prevention, the relationship with the airline industry, to try to prevent and educate so that accidents don't happen and best practices are done, is important, but so are regulatory indicators and enforcement of them. So if anything, there should be a duality.

To transfer all your beanies to one system, and to expect everybody to behave.... Listen, they're trying certain things in the food inspection industry where they have delegated certain things to the industry, but CFIA hasn't said they would make all their reports secret. This particular regime goes so much overboard that it creates a problem. If they don't realize that, if they did this risk assessment internally they'd say there's not much of a risk if they do it this way.

I think when the first accident happens and people start raising questions, when they see the first Transportation Safety Board report with "blank, blank, blank", like some security intelligence report, they're going to wonder what's going on here. Why can't the public know what happened with this particular airline?

**The Chair:** Thank you.

Mr. Valley.

**Mr. Roger Valley (Kenora, Lib.):** Thank you, Mr. Chairman, and thank you for allowing me to be part of the committee. Thank you to the presenters.

It's already been repeated a couple of times about the Moshansky report and the tragedy that happened in Dryden. Dryden is my home town. Being at the scene shortly after that accident was nothing compared to 10 years later when I had the opportunity, as mayor of the community, to participate in a memorial service with the survivors. That was something I'll never forget. So we want to do everything we can to avoid those incidents.

Very quickly, I happened to meet Ms. Brazier and Mr. Whalen in the middle of 2,500 square miles of some of the roughest and most beautiful country in Canada—the middle of my riding. When people are coming from the edge of the frontier—and we have very few frontiers left—to tell us there's a problem, we should be listening.

My question for you, Ms. Brazier, is this. You've spoken about the network across Canada, and you mentioned the number of people involved—574 operators in your category. I'm wondering if you could tell us what you are hearing from the operators right across Canada whom you know and contact in your network.

•(1605)

**Mrs. Kirsten Brazier:** Along the lines of what I presented in our letter, many people are afraid to come forward and speak about these kinds of things. I can't say for all of Canada that absolutely everybody agrees with us. I think the industry, even those that are a problem in our industry, would agree there's a problem, which is a bit of an odd state to be in, unfortunately.

I think the most important thing on people's minds is safety. I think the information that was previously being shared under the CADORS system before it got all locked up, and now is meted out to us daily in a batch, is absolutely useless for consolidating and analyzing information. It's sad. I think Mr. Rubin was talking about privacy issues, but this safety information needs to be shared. I think people are willing to learn from the mistakes of others. I think they're willing to learn from these accidents. The information isn't being made available to us, which is unfortunate. I think a lot of operators would like to operate legally; they would like to operate safely.

The same issues that we are faced with are the problems. Everybody around us is cutting rates, cutting corners. It's very difficult for somebody to put their standards on the line and suffer the cost. It's very difficult to invest all your money in a dream and have it sacrificed by those around you, and you're not willing to compromise your standards, so you have no choice left.

**Mr. Roger Valley:** Thank you.

In the short time I have left, I wanted to point out where you serve. You serve in a very remote part of Canada. So it's not a problem just in the remote sites or the end-of-the-road towns like Red Lake or Sioux Lookout or Pickle Lake. It's a problem in the urban areas too, that are served by some of the same operators?

**Mrs. Kirsten Brazier:** My partner and I have worked all across Canada in various areas, and the people we are talking to are in areas all over Canada. We just happen to be speaking as operators in the Red Lake area. This is not a Red Lake problem. This is a Canada-wide problem in our system. Unfortunately, again, with the fear of reprisal from Transport Canada, people are just not willing to take the risk that we've taken here today. We took that risk because we believe in what we're saying, and we hope that by doing this others will come forward. But that's not for us to say.

**Mr. Roger Valley:** On behalf of the riding and the rural nature of the riding, I want to thank you and the people who are actually out there doing the work to bring these issues forward. So thank you very much.

Thank you, Mr. Chairman.

**The Chair:** Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman.

Thank you all for your presentations. In the short time I have, I will ask each of you a question. I will start with Mr. Balnis.

First, Mr. Balnis, you have done a very detailed analysis of the Bill and I thank you for that because it will be very helpful to us. Going to page 24 of your report, you state that in February 2007 a Transport Canada SMS inspector tried to stop an investigation.

Could you summarize what happened and tell us what would be the significance of the changes you request in the context of that case?

[English]

**Mr. Richard Balnis:** We had a particular flight in November. Four flight attendants were injured in turbulence. The airline, in particular Air Canada, did not conduct a lawful investigation under

the code and did not provide complete information. We therefore filed a complaint with the safety officer in Vancouver. The safety officer promised to issue a ruling. Nothing was coming forward until we phoned the safety officer's replacement, who said, "I have been told not to continue with my investigation." We then tracked down the person who was told and raised it with him, and then we raised it with other people in Transport Canada. The investigation was concluded. A direction was then issued. Those are the basic facts.

What is amazing is that in doing the SMS assessment, they told the Transport Canada safety officer to stop doing his investigation under the code. That is exactly why we are so fearful—on page 24—and why we need your help to make sure that the code and the Aeronautics Act and the other legislation can fit together to do all their jobs. It's not one over the other; it's making them work together.

That is all I can say at this point. Hopefully, I've answered your question.

• (1610)

[Translation]

**Mr. Mario Laframboise:** Thank you, this is very helpful.

Mrs. Brazier, you stated at the end of your presentation that you would like to have clear regulations that would be uniformly implemented. Your concern seems to be that Transport Canada has already started implementing the SMS. So, this Bill will not help you at all, will it?

Is that your message today?

[English]

**Mrs. Kirsten Brazier:** Yes, it is. Our difficulty with the present system is that if you go to Vancouver or Saint John, or if you go to Victoria or Red Lake, you should have an equal and fair interpretation of the regulations. Right now what's happening is that each little area and each inspector have their own interpretation, which involves the creation of policy to, I guess, enforce it with the carriers.

When you have a system where the regulations are no longer clear, the law is no longer the law. It becomes policy that differs from one corner of the country to the other. Now you have a system of more paper that is subject to more interpretation and a lot of other things.

I think we're going in the wrong direction. I think we need to take the time to resolve the problems so that we have a firm base on which to add additional layers of safety or whatever comes about in the future.

I don't know if that answers your—

[Translation]

**Mr. Mario Laframboise:** Thank you.

Mr. Rubin, you are absolutely convinced that the Bill will deprive you of your access to information. I know that you have done excellent work in the past to inform the public about important accidents and I commend you for that. What you are telling us is that if the Bill is passed as drafted, without any changes, you will not be able anymore to make information public in order to inform Canadians as you have done in the past. Is that your concern?



[English]

**Mr. Ken Rubin:** Yes, it is.

I think there's a bit of a misunderstanding, because you have to really understand what clause 43 of Bill C-6 means. You have to turn back to section 24 of the Access to Information Act. What you have in the Access to Information Act are the principles of the act; then people can apply, and there's a set of exemptions, sections 12 to 26. There's commercial confidentiality and there's policy advice. Section 24 says, listen, there are certain statutory provisions passed by Parliament—and this would be one of them—confidentiality provisions within the statute, as laid out in clause 43, including the confidential reporting system, the tape system, the military plane system, and the medical doctor system, which I have less of a problem with. Those things are statutory confidentiality prohibitions that are to be totally excluded from the act. There's no injury test, there's no time limit, and there's no public interest override possible, because they fall within that section.

That's a lot different from putting in the checks and balances. I get...regulatory audits whether I agree or not. I've appealed on some, where there are commercial confidentiality citations or there's personal information or whatever. At least I get a separate report; I don't get nothing. Maybe that's fine in terms of income tax material, but in safety matters, no, it's not fine. That's what I object to. Put it under the ordinary provisions of the act.

They're putting this up God-like on a pedestal and saying confidentiality is so important, we're obsessed so much with it, trust will break down. It's not true. I've seen many an access request where initially the parties have a confidentiality agreement, or claim they do, but under the Access to Information Act it isn't the case because there are other provisions that take precedence.

Really, in the end, that full and frank discussion can still occur and things can be done. But to say right from the start, sweep it away and we'll never hear anything any more, ever, is just a touch too much, so to speak.

•(1615)

**The Chair:** Mr. Julian.

**Mr. Peter Julian (Burnaby—New Westminster, NDP):** I'd like to thank you all for coming forward today.

These are, along with those of Justice Moshansky and the Canadian Federal Pilots Association, the best presentations we've heard on Bill C-6.

We've had two types of presentations. We've had ones about the much more profound operating concerns you've all raised today, and they're much more in depth. We've had some presentations that are very theoretical, as you mentioned, Mr. Balnis, ones that simply talk in theory about SMS. But every single in-depth presentation has criticized this government's reckless bent to diminish air safety, and it's a matter of concern to us. Thank you for being so detailed.

I would like to come back to the issue of inspectors and ask you this, Mr. Balnis, because we've had some playing fast and loose with figures around flight inspections within the Canadian airline industry. The government unfortunately made a kind of mistake this week in publishing a moving-forward document where they

actually talk about an attrition rate of 32% to 50% over the next few years. I think they obviously have confirmed what everybody has been raising as a major concern, that we are lowering the number of inspectors and lowering the surveillance around safety. Do you have any comments about inspections, inspectors, and the attrition rate that is so clearly identified in this document this week?

**Mr. Richard Balnis:** I think the attrition rate is well known from witnesses, but the issue this committee has not explored—and I've attended most of these hearings—is actually looking at the budget. When Mr. Grégoire testified here, I was very surprised that a department would not know how many inspectors it had in 1992. They couldn't give the comparison with what Justice Moshansky said was 1,400, and we have an inspectorate of about 800-plus for the last five years.

What I'm concerned about is that you haven't asked for future projections. The future projections I've heard... I was part of a briefing back in February 2006 at which I asked specifically for a presentation on the reorganization. The person presenting it from Transport Canada had a slide show that they presented, and the slide that was most alarming to me indicated that they were anticipating a 46% retirement rate. They then were projecting—this was in 2006—a minus 1% budget cut for each of the next three years, and then minus 5% projected for 2008-09. I said, "Give me that slide", and they said, of course you're not going to get that slide, but we are proposing this; we are planning with this. And they said, "With the election of the Conservative government, it may be worse."

It is on that basis, looking forward, that I am very concerned that you have not gotten into the meat of the numbers. The closest you've come to is 140. You should ask for that slide, which gave management's projections of what they're going to have to deal with going forward, because I think that is the issue that needs to be looked at by this committee.

**Mr. Peter Julian:** Thank you for that. It's very clear that you're talking about a cumulative 10% cut at least, and the document released this week also talks about a larger cutback through attrition. So this is a matter of legitimate public concern.

I'd like to come to the issue of reprisals. We had the Canadian Federal Pilots Association raising concerns about coming and testifying. Ms. Brazier and Mr. Whalen, you mentioned in your testimony concern about reprisals.

I'll start with Mr. Balnis, but I'd like to ask each one of you: are you concerned about reprisals? Have there in the past, when CUPE has appeared before this committee, been any repercussions from doing that on other issues, or concern about testifying on this issue?

**Mr. Richard Balnis:** On June 20 we appeared before this committee on the number of flight attendants on board aircraft, the so-called “1 in 50” issue. Three weeks later we were sent a letter by Transport Canada indicating that our conduct was unprofessional and that we would have limited access to Transport Canada officials going forward. We raised this letter with the minister, and that ban was shortly thereafter withdrawn, in November. We expect a similarly frosty reception from Transport Canada for appearing today. We did not bring an elected officer with us who works for an airline because we suspect there will be reprisals at the airlines against our elected people who work there because of the testimony we've put forward.

We were actually thinking of blanking out the names of the airlines in our brief to protect our people, but we felt, as Mr. Rubin would say, that this would sort of defeat the purpose of coming in with “blank”. So we've named Air Canada, we've named Transat, we've named actually Calm Air, and we will defend our members there if necessary by all the means we have. We have in the past and we will continue to do so.

In one particular case involving one very vocal critic of SMS at one of the airlines, we had to go to the Canada Industrial Relations Board to preserve her job. Her job is preserved, but she is not here today for that reason, because we don't need any more targeting of our people over this issue.

When you move from the theory, when you move from the castle in the air to the pointy end of the production, which Dax Air and a lot of other people talk about, that's where you have to have people come forward.

And just to raise this aspect, I have gotten many e-mails and brown envelopes from inspectors raising issues and urging me to raise those issues, but they are afraid they will lose their jobs if they come forward. Is this a non-punitive culture, when people can't raise these issues and have them discussed? I think we're far from that.

I look forward to answering further questions on this issue, if there's a need, but I'd like my co-panellists here to also give their views.

• (1620)

**Mr. Peter Julian:** Ms. Brazier, you mentioned fear of reprisals, and it's quite shocking that there was a direct reprisal when CUPE appeared in front of this committee. This is very disturbing, and I think the committee will have to follow up on it.

Are you concerned about reprisals for having given what is extremely important and compelling testimony to this committee?

**Mrs. Kirsten Brazier:** We've experienced reprisal in a small way all along since we started our company, in that, not having an arbitrator to take our concerns to when there was an issue over policy versus law, we were threatened. Initially we were told we would not be granted our certificate.

**Mr. Peter Julian:** When you say you were threatened, what was that?

**Mrs. Kirsten Brazier:** Well, when you have sunk all your money into purchasing and insuring and repairing an airplane in preparation for launch... We were applying for certification for our company, and of course we were trying to follow procedures and the letter of

the law in order to meet the standard to get our certificate. At that early stage—and there are many other examples—we had issues with various inspectors and the department that we were dealing with for our own certification, and there was no place to take those concerns. Basically, the answer to our dilemma was “You must do X in order to achieve Y”, which was getting our certificate.

Subsequent examples involved other operators whom we did work for. When Transport wanted policy incorporated in their manual with no basis in law and we asked for mediation or for an independent opinion on the law, we were told in one instance—actually, the operator was told directly—that if they continued with the type of manual we were doing, they would get a very serious audit or a very in-depth audit.

**The Chair:** Mr. Fast.

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

Before I ask my questions—

**A witness:** Could I say something on that, please?

**The Chair:** Maybe through another question.

Mr. Fast.

**Mr. Ed Fast:** Mr. Chair, before I go into my questions, could I ask first of all that Mr. Julian provide the committee with a copy of the section of the moving forward report that actually suggests there is going to be a 46% reduction in the number of inspectors? He used the word “attrition”, and somehow, in his lexicon of aeronautical terms, he equates that with an actual reduction of inspectors. My understanding of “attrition” is a natural movement out of a firm or a company, due to age and retirement, of employees who would typically be replaced, but I'm sure Mr. Julian has his own definition of attrition.

Second, Mr. Chair, could I ask Mr. Balnis to table with the committee the brown envelopes he referred to? We were just talking about transparency. Mr. Rubin took a great deal of time telling us how important transparency is. Obviously, if there are references to brown envelopes, we should have the contents of those, so that we know those allegations are true.

Getting to the actual questions, Ms. Brazier, am I correct in understanding that you're drawing a distinction between the small operators—the air taxis—and the airline industry? I sensed that's what you were saying, that your industry, being the smaller operators, isn't ready yet for implementation of SMS. Did I understand that correctly?

• (1625)

**Mrs. Kirsten Brazier:** Let me just clarify a small point. When you shrink us down like that as “smaller operators”...our companies may be one- and two-airplane operators, but our size as an industry on the air taxi and the AMO side far outweighs the size of the airline industry and the commuters. We contribute more to the gross domestic product than those airlines, whose incomes and profits all go offshore. So I might suggest that we are actually a very large part of the affected—

**Mr. Ed Fast:** I didn't intend to imply that you're not a large part. I'm just asking whether you're making a distinction between this large industry, which is the smaller operators, and the airline industry, which is the big carriers.

**Mrs. Kirsten Brazier:** If you look at the division of the CARs and how it is structured, you will see that each and every section of the CARs is very different. The air taxi, the aerial work, the private operators, the airlines, and commuters are all very different, which is why they've been given their own regulatory structure.

**Mr. Ed Fast:** But it's your position that your particular industry, being the smaller operators, isn't mature enough yet to implement SMS. Is that correct?

**Mrs. Kirsten Brazier:** You could say that.

**Mr. Ed Fast:** You are not suggesting that the airlines shouldn't be looking at implementing SMS, which in fact they've already done. And you are not suggesting that they should back out of SMS, are you?

**Mrs. Kirsten Brazier:** We're not suggesting anything on anybody else's behalf. As our own selves, as an air taxi operator, we can only offer you our own perspective. And as we've stated, we feel that SMS is a good business tool, but it's not something you can legislate into making an industry think safely.

I think we've covered that.

**Mr. Ed Fast:** Thank you. That's very helpful.

Now to each one of you, other than Ms. Brazier, do you support SMS in principle, as a program that will improve air safety provided that the appropriate oversight is in place?

Mr. Balnis.

**Mr. Richard Balnis:** That's the question where you get lost. Don't ask about the theory. Look at how it's being implemented now. The response we would give...are we against SMS, are we against our employers running themselves properly, to have a safety plan and a policy? You'll see in those tabs what's required: to have trained employees, to have documented procedures. You would think these airlines do it now. But if we are most definitely against the SMS that is being implemented now by TC, it's because you need some key changes in the law to make it work.

**Mr. Ed Fast:** All right. Given the right context, you would support SMS.

**Mr. Richard Balnis:** Not the right context, the right elements.

**Mr. Ed Fast:** All right, the right elements.

I used the term "regulatory oversight".

**Mr. Richard Balnis:** No, sir. What was astonishing when—

**Mr. Ed Fast:** I'd like to get to answers here too.

**Mr. Richard Balnis:** You need three elements.

**Mr. Ed Fast:** All right. Tell me quickly what those elements are.

**Mr. Richard Balnis:** You need to keep the regulatory box, you need to fix SMS, and you need to have regulatory oversight. Right now, if you don't have the right SMS, it's not going to work, in practice.

**Mr. Ed Fast:** If I can move over to Mr. Rubin...

Do you object fundamentally to SMS, or is it the context in which it's being implemented that you're opposed to?

**Mr. Ken Rubin:** It's not a trick question, I agree, and I do object to it. It's an alphabet of the wrong order. It's optics or lack of them. Really, it's disgusting.

Since 1998, Transport Canada has been pretending they had the legislative authority to just willy-nilly go ahead and set forward a whole new philosophy that has not got much substance to it; when you knock out some of the underpinnings of the regulatory side and when you have tried it before and it's failed, you have to ask yourself why it has failed. Why are we writing all this paperwork and spending all this time and putting pressure on the airlines to implement this kind of a willy-nilly system?

**Mr. Ed Fast:** So you're opposed to SMS.

**Mr. Ken Rubin:** No, I didn't say that. Don't—

**Mr. Ed Fast:** Oh, I thought you said that. Sorry.

**Mr. Ken Rubin:** No, you're dealing in black and white. We're dealing in bureaucratic grey areas here, and I'm saying you've got to understand that this system has so many fault lines that it's not a matter of being opposed to it or not. You have to look at why it has so many deficiencies and problems that it's time to call a halt and start anew. It's not being "opposed" or "for" anything.

• (1630)

**Mr. Ed Fast:** Thank you for that clarification.

We've had quite a number of witnesses before us. Obviously, everyone has a different opinion. There are those who really don't like SMS. There are those who are big defenders of SMS. Those are those who support Bill C-6 and SMS. There are those who like SMS but would like to have Bill C-6 amended to make it a little more rigorous in terms of a regulatory framework, making sure the inspectors are in place, etc.

When I look at all the witnesses who have appeared before us, I might be inclined to trust the evidence of those who have the most to lose. Those, in my mind, are the pilots who fly the planes for the airlines that are going to crash if SMS doesn't work and who are going to lose their lives if SMS doesn't work. We had the Canadian Air Line Pilots Association before us. We had the Air Canada Pilots Association before us. Both of them spoke highly favourably of SMS and the fact that their companies and members had implemented SMS. Now they did say they had some concerns, and they talked about regulatory oversight. I think we're going to be addressing that in some amendments we're going to bring forward.

However, one of the key things they did say was that they do not support whistle-blower legislation because whistle-blower legislation works against SMS. They strongly supported the immunity provisions of Bill C-6.

Perhaps I could ask Mr. Rubin, because you're the one who has had a broader comment on the whole SMS system. How would you respond to the very individuals who are going to be flying these planes, who obviously are the experts? They've done a lot of research themselves into this. They've been an integral part of implementing SMS. They're speaking in favour of it. You aren't as warm to the idea.

**Mr. Ken Rubin:** I'm not even fuzzy warm.

I've dealt with a lot of whistle-blowers. Some people even call me a permanent whistle-blower, on issues such as breast implants to security, or whatever. You have some gutsy people in this room today. You've got a small operator who has come forward. I know they are going to face reprisals.

The air taxi industry has had its problems over the years, and it hasn't been sufficiently dealt with by Transport Canada. You've got a union here that is putting itself on the line. I've seen this so many other times, and there's not adequate protection. The Federal Accountability Act, under your government, has started to do something about it. They've realized that if people are going to come forward and speak out, then they're going to need some protection, and that's partly what that bill has done.

I'm getting to your point. It's not an either/or, just as it's not a totally voluntary system. Immunity is very nice, but pilot and human error do occur. Fellow colleagues are concerned that maybe some of their fellow pilots aren't totally up to par. I think you need a system

**Mr. Ed Fast:** Do you fly?

**Mr. Ken Rubin:** No. I don't fly, but I've dealt with pilots—

**The Chair:** I'm sorry, Mr. Fast—

**Mr. Ken Rubin:** I don't know if it's relevant, but I try to fly high in other ways.

The fact of the matter is—and I was never a member of any party—that you can't build a 100% immunity system. You need to have whistle-blowing protection because pilots need that outlet too. You just have to have it built into these systems. That's one reason why they don't want to reveal the tapes, because in the Swissair thing and in other things when people are under pressure...sometimes pilots don't always do the best job possible. Maybe their next of kin or other people are interested in how those pilots did, and they should have the ability, hindsight or otherwise, to know about that.

I don't think 100% of the pilots are so favourable about SMS that they don't see beyond their noses that there's more at stake than just whether they're protecting themselves.

**The Chair:** Mr. Bélanger.

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Thank you, Mr. Chair.

I want to talk a bit on the question Mr. Fast asked about when he was saying that pilots are in those planes. I believe there are flight attendants on the same flights, and perhaps some passengers once in a while. I think the flight attendants are very well represented here today. It's our responsibility around this table, all of us, to make sure the passengers' safety is also taken care of. It's not just the pilots.

**A voice:** I'm not suggesting that.

**Hon. Mauril Bélanger:** I'm not suggesting you are; I'm adding to it.

Therefore, the fact that the flight attendants' representative is saying they have some serious concerns is I think as worthy of attention as the pilots' views, just on that basis.

Thank you, Mr. Rubin. I know you know the system well. I certainly will take a look at section 43 and section 24 and how they relate. If necessary, if the government doesn't present an amendment, I suspect some of the opposition parties may. Thank you for that.

Ms. Brazier, should there be some reprisals for your appearance here today, I would like your undertaking that you would come back to some of the members of this committee who might still be around. I'm not sure I accept that there will be, but should there be, I would hope you would take it upon yourself and would accept this as a formal request to follow up appropriately and alert members of the committee, either through the chair or individually.

May I have your undertaking on that?

• (1635)

**Mrs. Kirsten Brazier:** I can assure you that if there are any threats of reprisal, the whole world will know about it, and I appreciate your concern.

**Hon. Mauril Bélanger:** Fair enough. Thank you.

I thank CUPE for your brief. It's fairly lengthy, and there's a lot of stuff to digest here, including the annex, but we'll do so.

I wanted us to focus a little on pages 17 to 19, which deal with the delegation of rule-setting to private bodies. Quite clearly you'd rather see that gone, and if not, I think you've even formulated an amendment—number 14, on page 19. In the alternative that we don't get rid of these sections, you'd ask that we designate “demonstrated low-risk, non-commercial sectors of the aviation industry”. I'd like you to twig me to what you mean by “non-commercial sectors of the aviation industry”.

**Mr. Richard Balnis:** I thought I knew the answer to that until I spoke with Mr. Jenner on Monday here in Ottawa. He is the author of the Helicopter Association of Canada study in tab 10. He said his understanding is that he and the CBAA, despite their testimony, would not be designated organizations under the law going forward; that in fact Transport Canada would be able to delegate functions to them whether this provision exists or not. He said, therefore, the provision would only apply to what Mr. Preuss spoke about, creating a college of ultralight pilots.

If that is the case, then the designation provision does not read the way I read it, because I thought the CBAA and the Helicopter Association had to come under that provision, that you couldn't go around it.

“Non-commercial”, in my view, is without fare-paying passengers.

**Hon. Mauril Bélanger:** So the military...?

**Mr. Richard Balnis:** They don't fall under the scope of the Aeronautics Act, if I'm not mistaken. They do their own thing. They are sort of the ultimate designated organization and run their own thing.

The CBAA flies the presidents of large corporations around, and you would think those people would be concerned about their safety.

**Hon. Mauril Bélanger:** So they're non-fare-paying, but they're still commercial.

Anyway, it's a grey area.

**Mr. Richard Balnis:** It's a tough area, sure.

• (1640)

**Hon. Mauril Bélanger:** I want to take whatever time we have left here to explore something we haven't explored before. How does SMS get implemented? Is there an exchange of correspondence? Are there reports, letters, memos, meetings? And who attends these? Are the flight attendants involved? Is their opinion sought? Are the pilots involved, and is their opinion sought? Are there meetings, and are there inspectors at these meetings?

Do you have a sense of how these systems get implemented? It might be helpful in understanding how they eventually would operate or are operating, in some cases.

**Mr. Richard Balnis:** In the documents you will see, though we did not put this forward, that the regulations were passed June 15, 2005, without waiting for Bill C-6, under an existing authority. The very same day, the regulations were exempted.

The document that is in tab 5, if I'm not mistaken, was then used as a three-year phase-in period, and each carrier has to do certain things to meet certain milestones. Transport Canada goes in and involves themselves in the process to make sure they have done this or that. If you fail to meet a milestone, they will threaten to suspend.

Within each company the company sets up its own process. We at Air Canada were involved at monthly meetings, but we haven't been involved for the last year and a half, because we raised uncomfortable questions.

**Hon. Mauril Bélanger:** Were there inspectors at these meetings?

**Mr. Richard Balnis:** At that point in time, Transport Canada and Air Canada had a fight, and the inspectors weren't there. For about a year the inspectorate was not in attendance at those meetings. At those meetings we raised such issues as how the Canada Labour Code might apply to SMS. Well, Air Canada wasn't interested in that question; the inspectors weren't there.

Similarly, as we understand it, the airlines will receive an audit. The inspectors will go in and ask if you've met the requirements on our staff instruction in tab 4. Then there will be an assessment that they have met them or have not.

We will not be invited to those meetings by Transport Canada. We will not be invited to those meetings by the air carrier. Transport regards the certificate holder as the one they do transactions with, and we are not invited.

We may meet separately with Transport Canada. In fact we asked in December 2006 how they approve Canada Labour Code requirements in the airlines. Five months later we have yet to get a response. We were phoned two months ago and asked if we were still interested in the response. I said, "Yes, we would still like it", but we have yet to get it.

**Hon. Mauril Bélanger:** Thank you, Mr. Chairman.

**The Chair:** Mr. Carrier.

[Translation]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Thank you, Mr. Chairman.

I thank all the witnesses for being here today. What you are telling us about the Bill is extremely useful.

My first question is for Mr. Balnis. I want to understand your involvement in this industry. Could you tell me briefly who are the people represented by the Canadian Union of Public Employees? Are they the pilots, the inspectors, the flight attendants? Do you cover all the companies in this industry? Could you give me some information about that?

[English]

**Mr. Richard Balnis:** CUPE represents 550,000 public and private sector employees across Canada. We are predominantly a public sector union—municipalities, school boards, hospitals. In 1986 the Canadian—

[Translation]

**Mr. Robert Carrier:** Tell me only about the air industry, please.

[English]

**Mr. Richard Balnis:** Yes. In 1986, the flight attendants joined CUPE as part of our division. They've been with us for 21 years, and I've been working with them for 21 years.

In the airlines, we represent only small numbers of employees at smaller airports in the aviation industry. For example, the airport in Sudbury is a municipal airport, so they would be CUPE members. Hamilton airport is CUPE members.

Other than flight attendants, our aviation presence is limited. We do not represent inspectors; we do not represent pilots; we do not represent mechanics. We are exclusively flight attendants plus these airport workers in the airline industry.

We have other federal workers, like the Port of Montreal *débardeurs*, the dock workers, but they're outside aviation. It's flight attendants almost exclusively in the aviation industry, and we have other workers in the federal jurisdiction.

[Translation]

**Mr. Robert Carrier:** You also know the small operators, like Dax Air Inc., whose flight attendants you represent.

[English]

**Mr. Richard Balnis:** No. Flight attendants are not required to be on aircraft under 20 seats. CAR 705, 703, and 704 do not have flight attendants. We could never represent someone who is not there.

[Translation]

**Mr. Robert Carrier:** All right. Thank you.

I would now like to know what you think about the designated organizations mentioned in the Bill and about which there is not much information in your report, I believe. What do you think of the creation of those designated organizations?

[English]

**Mr. Richard Balnis:** We were very concerned about it. I think the question asked of the CBAA was whether it was self-regulation. What we've tried to do in tabs 8 and 9 is give you the regulations that existed before the CBAA and the regulations afterwards. As you can see on page 17, they have enormous powers that are just like the government's. They control issues—for example, cabin safety procedures and flight and duty time limitations for pilots. PPCs have been watered down as a result. They can now be given by someone other than the minister. They decided on their own. The fatigue risk management system can entirely replace regulations.

When you're considering those matters of public safety, we believe it should be the government that does it and not a designated organization. Is it going to be airports next? Back in 2006, in Halifax, they were talking commercial air operators.

We are very concerned when you turn over those important public functions to a body that is a designated organization. That's why we offered you the two options—either delete it or make it a lot tougher and more restricted. We understand there will be an amendment from the government coming on this. As Mr. Preuss said, for six years they didn't realize the concerns you were expressing. Perhaps there will be some light in that amendment that will go some way to addressing our concerns, but how far it goes in the industry needs to be heavily circumscribed.

• (1645)

[Translation]

**Mr. Robert Carrier:** Thank you.

[English]

**The Chair:** You have one minute.

[Translation]

**Mr. Robert Carrier:** Mrs. Brazier, after having read the Bill, do you have the feeling that designated organizations could from now on replace the Safety Management System in your company, on top of what you are already doing about safety?

[English]

**Mrs. Kirsten Brazier:** I'm sorry. Can you...?

[Translation]

**Mr. Robert Carrier:** The Bill includes designated organizations which could represent Transport Canada in the implementation of the Safety Management System in some small operations. Large companies have already developed their own Management System but the designated organizations could be made responsible for its implementation in small operations.

Is that how you read the Bill?

[English]

**Mrs. Kirsten Brazier:** We don't know of any other operators like ours that have that kind of system in place. A test project was done on a few operators not representative of the entire air taxi industry. With respect to the airlines, even though that's not within our purview, I would have to defer to what Mr. Balnis had to say on that topic. We would not support a designated organization. The government is responsible to hold us accountable to the law.

They do actually defer things such as PPCs, as you mentioned, to independent organizations. We have some issues with that.

**The Chair:** Mr. Storseth is next.

**Mr. Brian Storseth (Westlock—St. Paul, CPC):** Thank you, Mr. Chair.

I want to start out by saying that I really do believe the role of this committee is to work on this legislation with the government as a group, and to try to focus on creating what many of our witnesses have called a culture of safety—not create it, because it's already in the Canadian aeronautics industry, but help to enhance it—and to bring us to the forefront of safety in the world, as the ICAO has put it.

I have to admit I'm a little bit surprised. We've sat here, as Mr. Fast has said, with several organizations and several witnesses. I will admit some have been against certain aspects of SMS, but even among those, even Judge Moshansky says he is in favour of the SMS theory. He actually took credit for helping to be one of the founders of SMS theory.

We've had the pilots associations in front of us; they're all very supportive. I get constant contact and e-mails from our pilots association and pilots. I unfortunately have the opportunity to fly on a fairly regular basis. I talk to airline stewardesses and pilots with Air Canada and WestJet all the time, and they all seem to think in person that it's a good idea.

Admittedly some of them may not be as involved with the details of it, but the people I talk to seem to believe this is a good system, at least in theory, especially if we keep the regulations that are already in place, which do make us one of the safest countries in the world in aviation.

That being said, I do want to get your feedback on this.

Mr. Rubin, I'll come to you in a second.

Ms. Brazier, I'd like to ask you one thing. Something continues to puzzle me here: the threats of reprisal. I'm just naive to this. What kind of threat are we talking about? What kinds of actions are you talking about? Have you ever received any of these threats in the past?

• (1650)

**Mrs. Kirsten Brazier:** [Inaudible—Editor]...our business. So our fate rides on the hand of the government—

**Hon. Joseph Volpe:** Mr. Chairman, can I have a point of clarification?

**The Chair:** Go ahead, Mr. Volpe.

**Hon. Joseph Volpe:** I don't mean to interrupt, but I just want to make sure that our questions and answers are in a context of some accuracy.

Judge Moshansky's name has been brought up. I can read back into the record what Hansard showed that Judge Moshansky said. He did not say what Mr. Storseth suggests he said. In fact, he agreed—

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** I have a point of order, Mr. Chair.

This is a matter for debate, and I have lots of quotes I can give, too, on what Mr. Moshansky said. He said if SMS would have been available, the Dryden incident probably never would've happened. He actually, in his original report, said that some system of management would be a good thing. That's a point of debate, and Mr. Storseth has the floor.

**Hon. Joseph Volpe:** It's not a point of debate. It's what he said here—

**The Chair:** I'm going to rule that it is a point of debate, and I would ask Ms. Brazier to finish her comments, please.

**Mr. Brian Storseth:** On a point of order, I'd like to make sure we haven't used up my—

**The Chair:** Mr. Storseth, we did stop the clock.

Ms. Brazier.

**Mrs. Kirsten Brazier:** As I was saying, our right to operate, to earn an income, and to recoup some of our hefty investment in our company is in the hands of the government, and the government has the ultimate power to take it away or to modify it or to restrict our right to operate. Apparently, as we found out, they have the right to modify documents outside the standards at their own whim and fancy. So when we talk about reprisal, it's not about somebody coming in and breaking our legs—we hope. We are afraid of our right to operate being taken away, because ultimately, what do we have left then?

Does that answer your question?

**Mr. Brian Storseth:** Have you experienced this in the past, or are you experiencing it now?

I'm not trying to be confrontational here.

**Mrs. Kirsten Brazier:** No, I understand. You're trying to get to the bottom.

As I mentioned a little earlier, when we went to get our certification for our company, we were probably close to the day we were scheduled to operate, and we had been trying for months to get to mediation, because there was a discrepancy over policy versus regulation. Our dispute went all the way up the food chain, from the original inspector right up to the head of our region, and we did not get any satisfaction until the bitter end. All along the way, there was the threat, as I said, to withhold our certificate.

Another operator whom we were doing work for was threatened, if he continued to use our company to do his manuals, that they would get a very extensive audit. Our response was, if your company meets the standard, Transport could come in for a six-month audit, and it might not be very friendly, but let them.

**Mr. Brian Storseth:** From whom did these threats come? Is it an individual in Transport Canada?

**Mrs. Kirsten Brazier:** No, it was various departments in Transport Canada. We can't single out an agency. It is the agency; it's the entire thing.

**Mr. Brian Storseth:** In the future, if you receive any of these threats because of your appearing here, everybody here would be more than happy to look into it for you.

Mr. Rubin, I understand you're not in favour of safety management systems, as you put it, or am I going too far in saying that?

**Mr. Ken Rubin:** No. I'm all in favour of prevention, of getting the airline industry to understand standards, to improve matters, and to work it out with the regulator. But that's the nature of the public beast. It's that person, namely Transport Canada, just as if it were the Canadian Food Inspection Agency or the Nuclear Safety Commission. They're regulators. They're there not just to play nice with the industry. They're there to make sure that certain things are enforced when there are infractions or violations. So the terms are being batted around a little too freely in this context.

You also mentioned, and I am all for, just like the pilots and everybody else, a culture of safety. But when you mix it with the culture of secrecy, I don't care what the field is, you're playing with dynamite, because the public is not going to put up with it.

Transport Canada has crossed the line, and that's the problem with the SMS. They've crossed the line by being arrogant, by not listening to people, by going behind closed doors, by excluding certain people when they want things done. Now they're coming to Parliament and saying, "It's a wonderful system we've created; legalize it." Legalize prostitution. Legalize SMS.

Wait a minute. Let's give this a second thought.

● (1655)

**Mr. Brian Storseth:** I'm not sure anybody's going to that extent, Mr. Rubin.

**Mr. Ken Rubin:** Well, they're going to the extent of saying let's shut out the public from knowing anything. They're going to the extent of saying, let's drop regulatory audits. They're going to the extent of saying, let's no longer have people be able to get certain kinds of CADORS or other building blocks for safety.

That's wrong.

**The Chair:** Thank you.

Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Thank you.

Mr. Balnis, you made a reference to page 20 of your report, in which you said that CUPE was concerned that the aviation SMS has been encroaching...you say before the passage of Bill C-6, it "has been encroaching negatively on other important legislation", including the Canada Labour Code. Can you briefly...?

I'm going to share my time, Mr. Chair, with my colleague Mr. Bélanger, and I have my clock running too.

**Mr. Richard Balnis:** Very briefly—and I think this will answer Mr. Storseth's question about pilots and flight attendants, because we're in the same aircraft—in June 2002 there was a tail strike of an airline in Frankfurt. A flight attendant was improperly in the cockpit. She was traumatized by the incident, because the pilot said "we're going to crash". She went off sick. She has never returned to work.

The pilots completed an air safety report under the no-discipline policy that is part of SMS. We don't have any problem with not being disciplined, but that report was never provided to the occupational health and safety committee. Air Canada appealed a direction, supported by ACPA, whereby we would not know the information the pilots provided. That is the issue of excessive secrecy that we attempt to distinguish.

Non-punitive reporting is fine, but when stuff becomes confidential and secret so that you cannot do investigations, that is a dysfunctional safety culture, wherein the airline or the pilot can hold stuff and we cannot access it.

If you can fix that—and we've offered you recommendations—I think we can go a long way towards addressing what Mr. Storseth was concerned about. As a very simple example, a concrete example, we have now been two and a half years in litigation over getting that pilots' report so that we could complete an investigation.

And having to force that flight attendant to relive her testimony—and Air Canada said it was never an accident... It was a category B, with \$10 million damage to the plane, and they won't share a report? What is wrong with that picture? That is not SMS; that is secrecy.

**Mr. Don Bell:** Okay. I think I understand. Thank you.

Ms. Brazier, I have your correspondence and the correspondence you provided us that came back from Transport Canada. Some of this relates to, I guess, the communications; the other is the SMS question I'm asking.

My understanding of Judge Moshansky's comments, by the way—and I don't have the transcripts in front of me, but I have my memory—was that he talked about SMS and regulations and Transport Canada continuing. In other words, SMS shouldn't replace Transport Canada's scrutiny. His suggestion was that it was an enhancement of what was there—don't drop the Transport Canada role in favour of SMS. That was my take on it.

You indicate repeatedly throughout the material you've sent us your concerns, and I've highlighted a couple of them.

You put down first of all that the industry has not been properly consulted. On page 2 of your letter of March 13, you made reference to the percentage of airlines that had been contacted being very small. I think you said it was 1.6% and 0.5%—in other words, 9 out of 574.

The other point is that you're saying that under SMS there are safety violations because the self-regulation doesn't work, and that because of cost, because of competitiveness, many of the airlines are just ignoring it. They're flying overweight, or they're doing other things.

Do I have that correct, then?

**Mrs. Kirsten Brazier:** You just threw a lot of stuff at me. First of all, we as an air taxi industry don't have SMS in place yet, so I don't think I can speak to that.

Definitely, with regard to oversight, I think that was the intention, but what we're contending is that the oversight under our present system, which is flawed, is non-existent. All these occurrences and the situation we've described here today and in our prior

communication are going on all along. It's been going on for years and years. It was going on when SATOPS was published. In fact, they claimed that Canada had the safest system in the world, and then they issued a 50- or 60-page report saying all of the things that weren't so safe about it.

• (1700)

**Mr. Don Bell:** I apologize. In your letter you did say:

Safety violations are so widespread that Safety Management Systems (SMS) and self-regulation will not work in our sector at this time.

Well, it's not there.

**Mrs. Kirsten Brazier:** What we're saying is that we would like to see the regulations start. We would like to see those items addressed before you can even talk about SMS.

**Mr. Don Bell:** On the bottom of page 2 of that same letter, you say it begs the question “why the government is trying to”, you say, “ram this process through when there is widespread concern...”.

On what do you base that concern?

**Mrs. Kirsten Brazier:** I think if you've consulted the witness list for all these consultations and proceedings, you will find that we are the first and only CAR 703 operator—and again, I thank you all for allowing us to appear here—to be able to speak out on these issues.

As I pointed out in that letter of, I believe, the 22nd—the one you were referring to a minute ago—

**Mr. Don Bell:** The 13th is the one I was referring to, and you have the 22nd as well.

**Mrs. Kirsten Brazier:** No, that's the one, the original letter. We spoke about the test case for SMS companies.

I might also point out that we were initially requested by our region to be one of those test cases. We agreed because we felt that if this new regulation was going to be put upon us, we wanted to be part of its implementation and creation.

In the end, upper management decided, for whatever reason, that other companies were more suitable. Yet when we look at the companies that were used as test cases, you will see from our statistics that they are not representative of our industry, which is so large.

We understood from various parties that a very large brief was given to each and every one of you. We have not been privy to that brief, but I'm sure you will have seen it because it seemed to be very big.

It stated that Transport Canada has done years and years of industry consultations through CARAC and these meetings, etc. Our contention is that CARAC is not available to small operators. The meetings are not held in small communities in the north. We are not privy to these kinds of meetings on a normal basis. We don't have budgets to travel at whim to get to these kinds of meetings. We are located from one end of Canada to the other. We're not located in major cities, such as Ottawa, Toronto, or Vancouver.

So when Transport Canada says they have consulted the two largest industries under the Canadian aviation regulations, we beg to differ, because we've shown that they are not consulting us.

**The Chair:** Mr. Jean.



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

Listening to all the witnesses thus far, it seems to me there are a lot of different places where an error can happen. It can happen with the pilot, it can happen with maintenance crews, it can happen with the company itself and their philosophy, and it can even happen as a result of a particular type of aircraft. Would all of you agree with that? Generally, would you agree with that statement?

**Mrs. Kirsten Brazier:** Lots of things can happen with anyone. I think we couldn't disagree.

**Mr. Brian Jean:** In this particular case, we're talking about planes in the air, and an error that happens in the air or on the ground with a plane is a significant error. Would you agree that it's usually one of those four causes, one of those four things?

Ms. Brazier.

**Mrs. Kirsten Brazier:** I'm not quite following your question. There is usually more than one error that leads to an event, so I don't

**Mr. Brian Jean:** Exactly. I think that's my point.

Indeed, there are many different things that could contribute to an error that would cause a crash or some harm to somebody in an aircraft. Would that be fair to say?

**Mrs. Kirsten Brazier:** Yes, I think I could agree with that.

**Mr. Brian Jean:** Okay.

I understand you had some particular issues with Transport Canada. In August 2006, you sent a letter to Transport Canada making allegations of industry nonconformance with the Canadian aviation regulations. Is that correct?

**Mrs. Kirsten Brazier:** May I ask if you are referring to the letter from David Bayliss at Transport Canada?

**Mr. Brian Jean:** I'm referring to a letter that you sent in a complaint—

**Mr. Peter Julian:** A point of order, Mr. Chair.

**The Chair:** Mr. Julian, on a point of order.

**Mr. Peter Julian:** Has Mr. Jean shared all contents of this correspondence with the committee?

•(1705)

**Mrs. Kirsten Brazier:** And may we see a copy of this letter that we wrote to Transport Canada?

**Mr. Peter Julian:** Yes, that's highly inappropriate, unless you have distributed it to committee members.

**Mr. Ed Fast:** This is what you've tried before, Mr. Julian.

**Mr. Peter Julian:** And you said it was inappropriate, Mr. Fast.

**Mr. Brian Jean:** Excuse me. The floor is mine, Mr. Chair.

**The Chair:** It is not a point of order.

**Mr. Peter Julian:** Mr. Chair, you ruled in the past to the contrary. If Mr. Jean is quoting correspondence, he has to make it available to the committee.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I would like to solve this. First, I am accountable and transparent, and I'm not hiding anything from the committee. I

do not have a letter. I have reference to a letter in a Transport Canada letter that I think was provided by Ms. Brazier.

**Mrs. Kirsten Brazier:** [*Inaudible—Editor*]

**Mr. Brian Jean:** But I have a question, and I just want you to answer the question.

**The Chair:** Ms. Brazier.

**Mrs. Kirsten Brazier:** The reason I'm asking to see this letter is because I don't believe there is a letter. If there was, I would probably know because I would have written it, or we would have written it.

There is reference in Dave Bayliss' letter to a letter, and I believe there was some conversation about a letter. But I was asking if we could see the letter because I don't believe we wrote one.

**Mr. Brian Jean:** I'm not sure if you did. There is no reference to a letter in any correspondence I have, but I naturally assumed it was a letter, because if I was going to make allegations against another industry or a competitor of mine, I would certainly put it in a letter. But maybe it was telephone calls.

Did you make an allegation to Transport Canada about some irregularities with some of your competitors?

**Mrs. Kirsten Brazier:** We did not make, nor have we ever made, specific allegations about anyone, which is why I'm questioning about this letter again, because that letter was implied by Transport Canada. Recently in a conversation, somebody else mentioned this letter, so I'm kind of surprised to hear you bring it up here today.

Again, there was no such letter, in my recollection. If you have one, I'd like to refresh my memory because my partner and I didn't write such a letter.

On multiple occasions we have expressed frustration to Transport Canada about the same state of the industry that we are talking about with you here. In our documentation here today, I don't think you will find any kind of specific company names mentioned.

**Mr. Brian Jean:** Okay, and that's my question. You did make a complaint, or you have made a series of allegations in the past about the safety of the airline industry in your area. Is that correct?

**Mrs. Kirsten Brazier:** I don't...

**Mr. Brian Jean:** Well, apparently...I have the correspondence indicating that as a result of some allegations you made, Transport Canada did a series of inspections of 11 operators and 27 aircraft in northern Ontario. In fact, relatively minor regulatory infractions were found, and there was no evidence of widespread safety problems. That's why I'm wondering, did you make these allegations about safety problems or did you not?

**Mrs. Kirsten Brazier:** I really can't speak to why Transport Canada would target a specific area in our country. I might suggest you ask Dave Bayliss for a copy of this documentation that supposedly exists. We have at all times stated that our concerns were with this industry across the nation, not in any specific area, and definitely not related to any specific company. So perhaps you might want to request that David Bayliss appear and produce this letter.

**Mr. Brian Jean:** That is not my point.

You have one aircraft, is that right? Your company operates one aircraft, you and your partner?

**Mrs. Kirsten Brazier:** Yes, we do.

**Mr. Brian Jean:** Okay.

What kind of aircraft is that?

**Mrs. Kirsten Brazier:** It's a Beechcraft 18 on floats.

**Mr. Brian Jean:** Okay.

But you have an impression that there are safety problems across Canada. What information would that be based upon? That's what I'm trying to get at, because they did an audit in your area of 11 operators and 27 aircraft and found very minor infractions. I'm just trying to find out what you're basing the evidence that you provided us today on and what you based your complaints on?

**Mrs. Kirsten Brazier:** We have personal experience in this industry, and as I've mentioned today, we've been speaking with operators across the country.

So if Transport Canada is examining the records of 11 operators in our area, at their own discretion, and they find that there is no problem, we might respectfully suggest that they're not looking deeply enough. But it is not our place to do their job or to make those statements, so I think perhaps you should question Transport Canada as to their safety findings.

**Mr. Brian Jean:** All right.

What do you consider to be Transport Canada's job? You've suggested—I think to CTV News—that they should do their job and you will do your job. I'm wondering what you consider Transport Canada's job to be.

**Mrs. Kirsten Brazier:** I don't think I made that exact quote, but certainly we have stated that we would like Transport Canada to do their job, which is oversight.

• (1710)

**Mr. Brian Jean:** Okay.

What do you consider your job to be in that?

**Mrs. Kirsten Brazier:** We operate to the standard, and that's why we were given our certificate.

**Mr. Brian Jean:** Do you look at safety as a joint venture, in that both you and Transport Canada would have oversight?

**Mrs. Kirsten Brazier:** Safety is an industry venture; it's not something that Transport Canada can legislate, as I've stated here today. Safety is an attitude, and it's a sharing of information that we're requesting, the same items that Mr. Rubin was talking about. We want access to our safety data, so that we can share it and become more safe. So, yes, it's shared, but not necessarily with Transport Canada legislating safety.

**Mr. Brian Jean:** May I make one quick point, Mr. Chair, just to clarify the record.

**The Chair:** [*Inaudible—Editor*]...but can I ask just one question, if you don't mind? Obviously you have to buy insurance. Do you go through any sort of a rigorous process from the insurance company to verify safety? How do you buy insurance, or what do you present to them?

**Mrs. Kirsten Brazier:** I don't know if this is related or not, but when we went to insure our company initially, we went to the

insurance company that provided insurance to the previous company that I worked and flew this airplane for.

As chief pilot, I have quite a number of hours on that particular airplane. I figured that because we were starting a new company, complete with a maintenance organization—of which my partner is the head—we would be considered safety conscious because we were providing maintenance in conjunction with our air service.

Funnily enough, the insurance company wasn't interested in our petition about safety; they were interested in dollars. In the end, they denied us insurance strictly on the basis that we were a new company. They are supposed to go through the company's accident and safety record; we didn't have one because we were new. They were also supposed to go through the pilot's safety record, and, touch wood, I haven't had any violations or accidents—and I don't want to jinx that one.

We have done our best to set up a safe environment and—

**The Chair:** The only reason I ask is that, for example, if you buy a car, whoever you buy it from has to provide you with a safety certificate, so you can buy insurance. I wasn't familiar with how the process worked.

**Mrs. Kirsten Brazier:** Perhaps in my naivety I thought an insurance company, insuring for a large volume of dollars under the liability, would be interested in seeing how a company operates. Since Transport Canada doesn't seem interested in really taking a look at how the operators operate, maybe the insurance companies would be interested to know.

**The Chair:** Thank you. I appreciate that.

Mr. Zed has generously given his time to Mr. Bélanger.

**Hon. Mauril Bélanger:** I might share with Mr. Bell too. We'll see.

**Some hon. members:** Oh, oh!

**Hon. Mauril Bélanger:** I want to go back to explore the SMS implementation, because it intrigues me. We don't have such systems in the small operators, but we have them at Air Canada. Where else are they right now?

**Mr. Richard Balnis:** CAR 705. I'm just pulling out their Transport Canada brochure, but the carriers that I would know about would be Air Canada, Air Transat, and Calm Air. They're in phase 2.

**Hon. Mauril Bélanger:** Let's look at Air Canada. I presume Transport Canada approaches the company and says, would you do this, or, you are going to do this?

How does it work?

**Mr. Richard Balnis:** It's not a question of Transport Canada approaching you. When they issued their exemption, they created a three-year timetable: you've got to do this by this, or we're going to pull your operating certificate.

So the operator got their brain focused and met the first milestone, then they organized themselves to meet the second milestone, and then they will do whatever they have to do in the third year. Then Transport Canada will go, click, the regulations are on.

These are for existing operators, not for new people who started today. I don't know much about that.

**Hon. Mauril Bélanger:** Now, I presume the inherent purpose of having air operators get a safety management system is to create an environment that will lead to better safety, and therefore involve, I would imagine—that's why I'm asking you—the various elements, including flight attendants, pilots, maintenance crews, and whatever else, into this culture of being conscious of the need for more safety. Is that correct?

**Mr. Richard Balnis:** Curiously—and it's one of our recommendations, I believe number 11—Transport Canada Aviation did not require the effective involvement of workers in the development and implementation of SMS. We were told that it was improper, illegal.

However, if you look at the rail safety SMS in Mr. Julian's glossy brochure, they require worker involvement as security.

These operators have not involved us in the implementation and maintenance of SMS, which is a very curious way to build a culture—from the top down, without the workers involved, particularly when we believe our rights under the code are not being respected. That is a big problem that we've tried to bring to Transport Canada's attention.

• (1715)

**Hon. Mauril Bélanger:** Are you talking only about flight attendants, or are you aware of how it is for pilots and others?

**Mr. Richard Balnis:** I'm aware of it, but I won't speak for anybody other than flight attendants. At Air Canada, Air Transat, and now at Calm Air, we found a new 90-page manual, apparently approved by Transport Canada, because there's a signing page for the minister—we've asked him if it's been approved—that violates part II of the Canada Labour Code.

**Hon. Mauril Bélanger:** Would you share that with the committee, please, or has it already been shared?

**Mr. Richard Balnis:** It's not in the book. This is a Calm Air document.

**Hon. Mauril Bélanger:** We can ask them to come before the committee.

**Mr. Richard Balnis:** It would be great if you would. I'll give you the reference for that, but it's a Calm Air document.

**Hon. Mauril Bélanger:** I want to go back, before I give 30 seconds to Mr. Bell here. The flight attendants have not been involved, or have they been involved individually? How does it come together? How do the flight attendants then subscribe willingly to an SMS? Do they get a memo that says this is the way it's going to be from here on in?

**Mr. Richard Balnis:** In June 2002, Air Canada implemented a new non-punitive safety reporting policy. We tried to negotiate it. They did negotiate one with the pilots, but for the people in the back, they didn't. It's just been implemented over us. We don't know how it works. For the last year and a half, we've been entirely excluded from any company implementation meetings at that airline.

**Hon. Mauril Bélanger:** Are you aware of the flight attendants or their representatives having meetings with the management, where Transport Canada safety inspectors were present or people who were in charge of overseeing the SMS, if there is such a creature in the Air Canada SMS? Have you had such meetings?

**Mr. Richard Balnis:** At the Ottawa headquarters level, because we went to Transport Canada, after our meeting with Mr. Cannon—

**Hon. Mauril Bélanger:** No, I'm talking about with Air Canada, where both the flight attendants and Air Canada management are talking to each other about concerns, difficulties, successes, with someone from Transport Canada in attendance, someone who has a regulatory oversight function. Has that happened?

**Mr. Richard Balnis:** Not in the last 18 months.

There have been meetings chaired by Transport Canada, to bang our heads together to make it work, but the inspectors weren't there because they were having profound disagreements over how it would be implemented. But that's different from what you're asking. In terms of us and Air Canada talking, those meetings haven't happened in 18 months—guaranteed.

**Hon. Mauril Bélanger:** Now, I have a question to you, Mr. Chairman. Would it be appropriate for staff to ask others in Air Canada, say pilots and ground maintenance crews and so forth, to get someone from them coming back to us?

**The Chair:** Absolutely. I think we can send a letter and make that request.

**Hon. Mauril Bélanger:** Thank you. I'd like that, if we could.

Thank you, Mr. Chairman.

**The Chair:** Mr. Watson, will you share one minute with Mr. Jean?

**Mr. Jeff Watson (Essex, CPC):** I will certainly do so.

**Mr. Brian Jean:** Thank you, Mr. Watson, and thank you, Mr. Chair.

First of all, we asked a question of Transport Canada and some other officials, and they said it would take more than three months for one inspector to inspect a plane. To do a total inspection, there are a lot of nuts, a lot of wires, a lot of problems. But my understanding is that SMS is a system over here where the information is confidential. The person who gives that information is kept confidential and the information itself is confidential. If that information gets to Transport Canada, which of course it's supposed to because that's what it's all about, it initiates an audit. Now, with that audit, inspectors go out and inspect that airline based upon that information from SMS. That information is publicly disclosed on request. Is that not the situation, Mr. Rubin? I'd like to hear from you, because that's my information from the department.

**Mr. Ken Rubin:** Well, Transport Canada issued an e-mail on November 3 to all of its personnel, which I got under the Access to Information Act and I can share with the committee. It says:

Unless expressly asked to do so by the accountability manager, Aviation Enforcement shall no longer initiate an investigation into a contravention committed by an SMS certificate holder.

Then further down, it says:

For now, all open EMS cases against SMS regulatory audits SMS certificate holders should be closed as NF-Abandoned. In addition to other information EMS, it is important that the following comments be included

•(1720)

**Mr. Brian Jean:** My question to you, Mr. Rubin—and I understand what you're reading there—is if what I've suggested is the truth, and obviously this committee is going to find out, would you feel more comfortable with this if that public disclosure was made at the audit stage, the inspection stage, after the SMS identified those issues?

**Mr. Ken Rubin:** I think it's a big leap to assume that there will be any more audits. But even the International Civil Aviation Organization has never gone this far in terms of their philosophy on safety management, that there be no public disclosure. Furthermore—

**Mr. Brian Jean:** Mr. Rubin, to be blunt, you haven't answered my question. My question is there for a reason, and I would really like an answer to it.

**Mr. Ken Rubin:** Sir, how do you know that audits are going to be done when they've issued directives saying that audits don't have to be done for now?

**Mr. Brian Jean:** You've heard today that we, as a government, are coming forward with some amendments to that, and we've heard that other—

**Mr. Ken Rubin:** Well, that's good if you do. I would wholeheartedly—

**Mr. Brian Jean:** I'm asking the question because I'd like to know how you feel about it.

**Mr. Ken Rubin:** If you legalize, just like they're trying to legalize

**Mr. Brian Jean:** That's our ability, sir.

**Mr. Ken Rubin:** Bill C-6 is trying to legalize SMS. I'm saying wait a minute, why aren't you legalizing regulatory audits, and why aren't you legalizing and promoting a system of air safety? If that's the case, that's wonderful.

Let me raise one other thing. That is, on October 17, 1994, why would the director general of systems safety at the time, Mr. Stewart, say this:

Effective immediately, confidential safety surveys are not to be offered to industry or internal Transport Canada clients. If you have a survey scheduled, it should be cancelled until further notice. I will discuss in detail during our workshop next week in Toronto.

Why did Transport Canada not learn from experience and not repeat history by implementing a dysfunctional faulty system?

I would wholeheartedly agree that if you bring back regulatory audits, you're doing the right thing. That's what regulation is all about.

**Mr. Brian Jean:** Mr. Rubin, I'd just like to say that in 1994 there wasn't a Conservative government in power, so....

**Some hon. members:** Oh, oh!

**Mr. Ken Rubin:** Well, I hope that explains everything.

**The Chair:** Mr. Watson, you have 40 seconds.

**Mr. Jeff Watson:** Thank you, Mr. Chair. I'm not sure what to do in 40 seconds here.

Ms. Brazier, I want to go to your presentation and to something that really concerns me. You say that “companies in our sector have a simple choice: they can break the laws and sacrifice safety, or they can go out of business”. May I ask which of these is your choice? Quite honestly, is that the situation you find yourself in?

**Mrs. Kirsten Brazier:** Would you like to see our financial records?

**Mr. Jeff Watson:** Is your competitive situation so bad that your company is either going to go out of business or you have to break the law?

**Mrs. Kirsten Brazier:** I think we gave you a fairly clear and succinct example of the choice we were faced with. That is a choice, so I guess time will tell what happens with our company.

**The Chair:** Thank you, Mr. Watson.

I have one minute for each party to ask one brief question.

Mr. Bell.

**Mr. Don Bell:** I'd like to follow up on the question that Mr. Watson asked. I was going to ask a variation on the same thing. In your letter of March 13, page 2, item 7, you said, “Companies in our sector have a simple choice: they can break the laws and sacrifice safety, or they can go out of business.” What you did was a variation of that, not going out of business, but losing business because you wouldn't comply.

Your next sentence is the one I like, which Mr. Watson didn't have time to get to perhaps:

We are trying to create a third option and that is to change the law and the approach of Transport Canada so that everyone is competing on a level and safe playing field.

You won't have time in the one minute I have, but perhaps you could provide a little more detail on how you understand that third option and send that to the committee for distribution.

**Mrs. Kirsten Brazier:** Certainly I will do that, but may I make a quick statement—30 seconds or so?

One of the things we covered in our presentation today was the single most important thing to resolve that one little point you're asking about, and that is to have an arbitrator. When there is a question on a point of law, we want a place to go. When there is any question for an operator to deal with, whether it's an inspector or a policy or a department, whatever it is, we want to be able to go to an outside agent and have a ruling on the law. If we can determine what the law is, it's much easier to actually abide by the law and to persuade others to abide by the law. Maybe we'd have more inspector resources available if we weren't arguing about the law.

•(1725)

**Mr. Don Bell:** You mentioned it in your letter, so it would help if we could have it in writing.

**Mrs. Kirsten Brazier:** Certainly.

[*Translation*]

**Le président:** Mr. Laframboise.

**Mr. Mario Laframboise:** Thank you very much.

I will stay on this topic, Mrs. Brazier, since the government will tend to create its famous designated organizations. However, in the Bill, a designated organization is one that is authorized to certify people operating in the air industry and, in conformity with the standards, it would have the power to modify, change, renew, suspend or cancel a certificate. So, the government would want to impose those organizations to the industry.

Could you tell me if there are in your industry any organizations that would be able to act as designated organizations? If not, do you believe that Transport Canada should instead increase its oversight and create the kind of ombudsman that you are requesting since, at the end of the day, what you want is to have someone independent who would be able to make decisions? Let us increase the supervision and the number of inspectors, let create an ombudsman but let us not create any designated organizations. This is what I would tend to recommend because, otherwise, you would have someone imposed to your industry. So, do you believe that in your industry there would be someone competent enough to act as a designated organization?

[English]

**Mrs. Kirsten Brazier:** No, there is no such.... Our industry is very diverse. Unfortunately, we have all these problems and there is no cohesion in our sector to have such an organization. That is why we need the government to do its job.

We support the idea of an ombudsman or some kind of system such as you mentioned to resolve problems with our current situation. We don't need another organization to not do its job; we want this organization to do its job. We want a place we can go to, to resolve disputes.

Thank you.

**The Chair:** Mr. Julian, one minute.

**Mr. Peter Julian:** Thanks to each of you for your courage.

Just to set the record straight on Justice Moshansky, he said, "Regulatory oversight is not being merely reduced. ...it is being systematically dismantled under Bill C-6." Any pretension to the contrary is disingenuous, at best.

I have two questions, to finalize your appearance today.

Ms. Brazier, you talked about breaking the laws and sacrificing safety as being a choice. Is that not because this legislation essentially rewards bad behaviour? It gives a competitive advantage to those who might be the most reckless in the airline industry.

And Mr. Rubin, you mentioned the closure of safety files. We heard from bureaucrats last week that 100 serious safety violation files were closed. Then we were told that they weren't closed, that they were transferred somewhere. No proof has been provided to this committee that they were transferred to anybody. Is your concern that these kinds of files being closed means there are safety gaps out there that we may not be aware of?

**The Chair:** Very briefly, please.

**Mr. Ken Rubin:** Yes. I noticed that on April 23, when the minister's officials were here, the officials said there are about 100 files. Near the end, he offered in part to provide the committee with

the files. I suggest strongly that you take him up on that, because for the public these files are secret.

In the documentation I have, on October 17, 2006, it says:

Since the implementation and enforcement of the SMS policy eighteen months ago, Aviation Enforcement has completed more than 200 investigations to-date using SMS. In addition, there are many investigations currently being conducted using the SMS procedure.

They're all secret. If the committee could get those, you would help us greatly. The committee in camera is not the public in disclosure. I feel that it would be important.

Why do we have the Air India inquiry going on? Because people want to know what happened in a plane situation. The travelling public wants to know what's happening with planes right now. So let's not wait 20 years; let's not wait until there's an accident. Let's get back on the rail.

**Mr. Ed Fast:** Thank you.

Ms. Brazier, I have a very quick question. You've been here and you've told us some of your concerns about Transport Canada. We talked a bit about SMS. It's too early to implement it in your particular industry. Have you reviewed Bill C-6?

**The Chair:** Mr. Fast, one minute.

• (1730)

**Mrs. Kirsten Brazier:** I have.

**Mr. Ed Fast:** Does it apply to you? Does it apply to your industry? Does it apply to your particular company?

**Mrs. Kirsten Brazier:** Unfortunately, I'm not an expert on Bill C-6, so I can't tear it apart, if that's what you're asking.

**Mr. Ed Fast:** No, I'm not asking that you tear it apart. What I'm suggesting is that even though the discussion around this table is about C-6, in fact your company and your industry—the smaller operators, the air taxis—aren't covered under Bill C-6 at this time. Is that your understanding?

**Mrs. Kirsten Brazier:** No, I think I would have to disagree with what you're stating, but I doubt there's enough time to address that issue.

**Mr. Ed Fast:** Okay. I'm advised that Bill C-6 wouldn't apply to your particular company as a one-operator company.

**Mrs. Kirsten Brazier:** We've been told that it does.

**Mr. Richard Balnis:** This Transport Canada publication says aerial work, air taxi operations, and commuter operations, September 2008, planned in force.

**Mr. Ed Fast:** It's not in force.

**The Chair:** Thank you, Mr. Fast.

As you can hear, the bells are ringing.

We appreciate you coming in and presenting us with your positions and points of view. We thank you.

Mr. Jean.

**Mr. Brian Jean:** Mr. Balnis referred to brown envelopes, and he didn't confirm to the committee whether or not he would provide those to us, or how many there were.

I would like to have an undertaking that he would provide us the contents, so we can read them.

**Mr. Peter Julian:** That's absurd.

**Mr. Peter Julian:** Absolutely not. A point of order.

**Mr. Brian Jean:** Why are you against accountability, Peter?

**The Chair:** The meeting is adjourned.

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