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Chair

Mr. Merv Tweed

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• (1530)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Order, please.

Good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 53. Pursuant to the order of reference of Tuesday, November 7, 2006, we are here to study Bill C-6, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts.

Again joining us from the Department of Transport are Franz Reinhardt, Susan Stanfield, and Merlin Preuss. Christopher Shelley is from—

Lieutenant-Colonel Jacques Laplante (Director, Flight Safety, Department of National Defence): Sir, I'm replacing Colonel Shelley. He had to go away on flight safety business.

The Chair: All right. Thank you.

Alex Weatherston is with us today as well.

Just before we start, I'm going to give the floor to Mr. Volpe.

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

I'm delighted to be back after a week's absence. Before we get into the business of the committee, I want to thank all members of the committee for their expressions of sympathy and condolences over the course of the last week. It was much appreciated. I guess it speaks to the fact that civility prevails everywhere. Thank you very much.

Back to business, Mr. Chair.

The Chair: Thanks, Mr. Volpe.

(On clause 2)

The Chair: When we last broke, we were dealing with BQ-6, Monsieur Laframboise's motion on page 10. We had some debate around it. I don't know if people had more to add.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Obviously, you understand that I was going to maintain the amendment moved, BQ-6. First of all, I believe that provisions in the Canada Labour Code would supercede this legislation. Even the Liberal Party moved a similar amendment. With regard to the statutes added in amendment BQ-6, they are the Transportation of

Dangerous Goods Act and the Canadian Transportation Accident Investigation and Safety Board Act.

I could put forward a number of additional arguments in support of maintaining this condition in the amendment. However, among other things, it would be important for access to information issues to ensure that Bill C-6 does not contradict the Canadian Transportation Accident Investigation and Safety Board Act. It is important for us as lawmakers to show to Transport Canada and to all stakeholders that, under Bill C-6, the Canadian Transportation Accident Investigation and Safety Board Act would prevail over Bill C-6, with regard to access to information among other things. Some provisions in Bill C-6 restrict access to information.

It is very important for us to ensure that access to information is always authorized at the Canadian Transportation Accident Investigation and Safety Board. In spite of some of the comments made, we know Bill C-6 can restrict some powers under the act, with respect to access to information among other things.

However, even if the Transportation of Dangerous Goods Act, 1992, stipulates that its authority is exclusive, it is important that such authority be maintained. In February 2006, Transport Canada published a policy statement that among other things restricted part of the Transportation of Dangerous Goods Act. Transport Canada must understand that the Transportation of Dangerous Goods Act still prevails over Bill C-6. Transportation of dangerous goods is an activity that must be regulated. That is why Parliament passed a law to that effect in 1992.

That is what I had to add, Mr. Chairman. I maintain the amendment moved, BQ-6.

• (1535)

[English]

The Chair: Mr. Julian.

[Translation]

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chairman.

I agree with Mr. Laframboise. We are talking only about cases where there would be a conflict between Bill C-6 and the three existing statutes. If such a conflict were to arise, the other statutes would prevail. I don't see how people can be opposed to that. It's common sense to have the Canada Labour Code, Transportation of Dangerous Goods Act and Canadian Transportation Accident Investigation and Safety Board Act prevail in the event of a conflict with Bill C-6. I think it makes sense, and therefore I support Mr. Laframboise's amendment.

[English]

The Chair: Just for the information of the committee, when we talk about BQ-6, we are identifying NDP-3 as identical. So they are on the same....

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I did notice that, actually, Mr. Chair.

I much prefer the wording in LIB-2, which is obviously very similar, except, of course, it doesn't include the other two acts.

I'm just wondering if Justice and Transport could comment. After listening to what Mr. Laframboise and Mr. Julian have said, do you find that there would be any serious legal ramifications in the future?

The Chair: Mr. Reinhardt.

Mr. Franz Reinhardt (Director, Regulatory Services, Civil Aviation, Department of Transport): Well, first, when Mr. Laframboise says "access to information", I understand what he means is access to the investigators of the TSB, the Transportation Safety Board, so that they have access to evidence.

You're not talking about access to information in terms of the Access to Information Act.

[Translation]

Mr. Mario Laframboise: No, that's it. I wanted to be perfectly clear that the Canadian Transportation Accident Investigation and Safety Board can obtain all the information it needs, and obtain everything that might be available to assist in its investigation.

Mr. Franz Reinhardt: I've listened to your arguments, and I must say that we do of course recognize that the statutes you have listed prevail over the Aeronautics Act. That is not a problem.

However, as I was saying the other day, section 14 of the Canadian Transportation Accident Investigation and Safety Board Act is very clear with regard to the board's priority with respect to any other investigation that might take place.

In the same fashion, clause 4.2(2) of Bill C-6 stipulates that:

An investigation carried out by the Minister of Transport under paragraph (1)(n) may not have as its purpose the making of findings as to causes and contributing factors of an aviation accident or incident.

That is to allow the Canadian Transportation Accident Investigation and Safety Board to take priority. Their investigators also have all the necessary powers in their legislation. In my view, as things stand, those statutes already prevail. The Department of Justice has informed me that we should not create a precedent by including references in bills that give priority to other bills, when the latter priority is already clear.

That is the only point I wanted to make.

• (1540)

Mr. Mario Laframboise: Except in matters relating to access to information. Then, when we make reference in subsequent legislation to access to information legislation, which according to what you say prevails anyway, there must be no confusion regarding information available to investigators of the Canadian Transportation

Accident Investigation and Safety Board. There's a small grey area here. I believe it is important there should be no grey area at all.

Mr. Franz Reinhardt: If I may take the floor once again, I believe we should be making a distinction between available evidence and access to information. In general, in the government, when we talk about access to information we are referring to the Access to Information Act.

What you are trying to do is ensure that investigators at the Canadian Transportation Accident Investigation and Safety Board have access to all evidence and information required to conduct their investigations.

Mr. Mario Laframboise: Exactly.

Mr. Franz Reinhardt: That is very clear in their legislation. Section 19 of the Canadian Transportation Accident Investigation and Safety Board Act gives them all the powers they need. They even have the power to subpoena witnesses, and so on.

Mr. Mario Laframboise: Except that—

Mr. Franz Reinhardt: Allow me to read this provision very quickly:

Where an investigator believes on reasonable grounds that there is, or may be, at or in any place, any thing relevant to the conduct of an investigation of a transportation occurrence, the investigator may, subject to subsection (2), enter and search that place for any such thing, and seize any such thing that is found in the course of that search.

Further on, the act stipulates that the investigator may require persons to submit to medical examination.

Under that act, they have all the powers they need, Mr. Laframboise.

Mr. Mario Laframboise: Except that my advisors tell me the new confidentiality clauses here in Bill C-6 could restrict those two powers investigators have under section 19. Subsection 19(9)(a) and sections (10) and (15.1) establish the information which must be produced in an investigation. The new confidentiality clauses in Bill C-6 could thus restrict those two powers. In my view, nothing must impose restrictions on those powers.

Mr. Franz Reinhardt: With all due respect, we have reviewed those provisions and we are of the opinion that they in no way restrict the Canadian Transportation Accident Investigation and Safety Board from obtaining information.

Mr. Mario Laframboise: So when my advisors tell me that it might happen, I would ask—once again, because insisting too much never hurt anyone—that you include the Canadian Transportation Accident Investigation and Safety Board Act to make it clear to everyone.

You understand, of course, that this is always for the purposes of the investigation. We have the same goal. My issue is that I don't want to allow a legal conflict to lead to a situation where one day the Canadian Transportation Accident Investigation and Safety Board will ask us why we passed a bill that restricted them in conducting their investigations. I don't want that to happen.

Mr. Franz Reinhardt: I would like to add something to help us achieve a better understanding. You said that some information is protected in the Aeronautics Act, but wherever it is protected, that protection is null and void if there is a court order to obtain information. In such cases, the information can be provided. That is why I am telling you the protection is there.

The Chair: Mr. Bélanger.

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

With regard to the last part of the discussion and access to information, my colleague Mr. Laframboise might have an answer when we come to section 43 and to proposed amendment LIB-8. If the amendment is passed, it will change the scope of exceptions put forward by the government in Bill C-6.

To come back to amendments BQ-6, LIB-2 and NDP-3, I have a question on a somewhat different issue. I will put the question to our researchers and legal advisor, and it concerns departmental officials, or the people moving the amendment that refers to the Transportation of Dangerous Goods Act, 1992, and the Canadian Transportation Accident Investigation and Safety Board Act.

Are the people who drafted those amendments for my colleagues aware of all provisions in those two statutes and the regulations flowing from them? Are they satisfied with those statutes? That is homework I have not done, Mr. Chairman. Can the researchers tell us whether there could be unforeseen obstacles we should know about in the Transportation of Dangerous Goods Act, 1992, or in the Canadian Transportation Accident Investigation and Safety Board Act? Here, we are including references to statutes I have not read, and I certainly don't know all the existing regulations that flow from those statutes.

I would therefore like to know if there could be unforeseen obstacles or conflicts arising from there.

• (1545)

[English]

Mr. John Christopher (Committee Researcher): I think the Justice lawyer could speak to that.

[Translation]

Hon. Mauril Bélanger: I am waiting for the government's response. That is not the answer I was looking for. I would like to know the answer our researchers and legal advisors will give.

Do you want some time to think about it?

[English]

Mr. John Christopher: We'd need more time.

Hon. Mauril Bélanger: May I suggest, Mr. Chairman, that we perhaps put that one off until our next sitting? Once we have that answer we can rapidly dispose of this one. Either we adopt BQ-6 or NDP-3, or consider LIB-2 instead, or none of them.

The Chair: We would have to do that with agreement, I believe, from the committee, and it would be deferring it until we get the legal opinion to Monsieur Bélanger's question.

I'll go to Monsieur Laframboise for his comment.

[Translation]

Mr. Mario Laframboise: That is fine with me, provided they answer the question properly. My advisors tell me that, under Bill C-6, some information held by the minister could be disclosed only with the minister's agreement. Thus, under the Canadian Transportation Accident Investigation and Safety Board Act the board might be unable to obtain some information if the minister refused to disclose it.

You say that the Canadian Transportation Accident Investigation and Safety Board can obtain all the information it needs, but under Bill C-6, the minister has the power to keep some information confidential. But I don't want the minister to keep information confidential in an investigation. That's a kind of situation where I find myself asking questions, like Mr. Bélanger. Who is right here?

In the same vein, on February 2, 2006, the department issued a directive restricting the Transportation of Dangerous Goods Act. The department should be more open and allow our researchers to have access to all the documents that are pertinent so that I can make an enlightened decision.

Mr. Chairman, I have no difficulty with Mr. Bélanger's request, provided that our researchers have the time they need for the analysis.

[English]

The Chair: Is it the will of the committee to stand clause 2 until we get that information, and we will resume it once we have it?

Some hon. members: Agreed.

(Clause 2 allowed to stand)

(Clause 3 agreed to)

(On clause 4)

The Chair: We have amendment BQ-7 on page 13.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: The amendment reads as follows:

4. (1) The portion of section 4.2 of the Act before paragraph (d) is replaced by the following:

4.2 (1) The Minister shall ensure that aeronautical activities are conducted at all times in a manner that meets the highest safety standards established by international organizations, including the International Civil Aviation Organization, and in the discharge of that obligation the Minister may, by regulation,

Obviously, the purpose of this is clearly to ensure the government is committed to complying with international standards, including those of the International Civil Aviation Organization.

• (1550)

[English]

The Chair: Are there any comments?

Mr. Julian.

[Translation]

Mr. Peter Julian: Mr. Chairman, I have taken a somewhat different approach with amendment NDP-3. We talk about the highest safety standards.

I think that my goal and Mr. Laframboise's are the same. The goal of everyone around this table is to ensure that the aviation system is the safest in the world. If we talk about the highest safety standards, regardless of whether they are international or not, I think that would achieve what Canadians want. That's why this change bothers me a bit.

I am prepared to accept Mr. Laframboise's amendment, but I would like to go a little further. I do believe that members of the committee want to ensure that we are talking about the highest possible safety standards.

[*English*]

The Chair: Mr. Jean.

Mr. Brian Jean: Actually, looking at the two amendments, while I respect Mr. Laframboise's position, I was quite convinced, until Mr. Julian put forward his argument, that his was the best amendment, NDP-3.1.

You've persuaded me out of your argument, Mr. Julian. I apologize for that. I was convinced until you spoke.

Could we hear from the department?

The Chair: Mr. Reinhardt, anyone?

Mr. Franz Reinhardt: Well, we're dealing with section 4.2, the obligations of the minister, and by accepting the amendment, we're sort of converting those obligations into a regulation-making authority. That may create a problem.

If you look at the proposed purpose section, 3.1, there is a recognition of international obligation. And if you look at the regulation-making authority under proposed paragraph 4.9(w), it's clear that the regulation shall meet the ICAO requirements.

So I'm not sure we need the amendment.

The Chair: Mr. Jean.

Mr. Brian Jean: I think it's actually proposed paragraph 4.9(z).

Mr. Franz Reinhardt: Paragraph 4.9(z) in this version, yes.

The Chair: Are there any other comments?

Mr. Preuss.

Mr. Merlin Preuss (Director General, Civil Aviation, Department of Transport): I have just an observation about the way that's worded.

If you're binding the minister to international standards, you should be aware that you may be defeating the very purpose here. Generally speaking, ICAO standards are below Canadian standards.

The Chair: Mrs. Stanfield, same comment?

Mrs. Susan Stanfield (Chief, Aviation Security Regulations, Department of Transport): That is basically what I was going to say.

As well, the way it's drafted, you may be fettering the minister's ability to actually set a higher standard than what ICAO establishes. So it's not only a case of ICAO setting a low standard or the minimum standard; you may actually be preventing the minister from setting anything higher.

Plus, you need to know that the way ICAO works, sometimes they set standards that aren't actually workable or acceptable in the Canadian context. Canada creates its own rules, rules that Canada believes meet an equivalent level or address the problem, and files the difference with ICAO.

So I think it might be a problem if the minister's discretion were fettered that way. It might defeat the purpose of what you were trying to achieve.

The Chair: Mr. Jean.

Mr. Brian Jean: That's actually why I was so convinced about amendment NDP-3.1. Indeed, if there were a desire to put in a reference to an international body or organization, I would suggest it would be a minimum standard.

How would that be, Ms. Stanfield? Would you have any kind of conflict there if it were put as minimum highest international standards?

• (1555)

Mrs. Susan Stanfield: Yes, if it said that it meets or exceeds the minimum standards set out. The only other concern I would have would be in the case where it really isn't appropriate for Canada to follow the standards set out. You may have tied the minister's hands. You may not have left him an out in the legislation to say that the standard isn't really appropriate and they need to do it a different way. That would be my concern with the wording of this text, that there's no option for the minister except to meet the standard.

I'm talking about amendment BQ-7 here.

The Chair: Yes.

Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): The point I was going to raise—about meeting or exceeding—has been raised already.

The Chair: Thank you.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Well, the fact of being subject to International Civil Aviation Organization standards would not prevent us from applying even stricter standards.

Ms. Stanfield, you said that we could decide not to comply with ICAO standards, and I have a problem with that. The government says that it is complying. Could you give me some examples of instances where ICAO standards would not be complied with?

[*English*]

The Chair: Mr. Preuss.

Mr. Merlin Preuss: As you may recall, probably the most eloquent example already read into the record came from Captain Maurino of ICAO. He gave the example of the AQP program. This is a qualified program to ensure currency for pilots, which is not in compliance with ICAO; this is an FAA requirement. We have a similar one that has a bridging process. Clearly, if you're attempting to ensure a higher standard of currency than what is in the ICAO standard, you would not be allowed to do that in the strict interpretation of what's being proposed here.

So there's a specific example—read into the record when our ICAO representative was here—of what Susan Stanfield was talking about.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: Thank you.

Perhaps Mr. Reinhardt put his finger on it when he said we might be encroaching on the regulations, or the establishment of the regulations themselves, by trying to be extremely precise.

I'm going to ask this question of the department's legal counsel. It is my understanding that the minister is going to be held accountable for legislation made in Canada, not for legislation made anywhere else. No matter what's in the standard established by that legislation, the minister is accountable. If the minister establishes standards that are superior to those seen in North America or indeed in other continents, then he is held responsible and accountable for the standard that he has implemented under this legislation.

Am I right so far?

Mrs. Susan Stanfield: Yes.

Hon. Joseph Volpe: So are we in fact giving him or her a way out by saying things like this, that it would be the highest standards established by another jurisdiction?

Mrs. Susan Stanfield: I'm not sure I'd characterize it as a way out, but it might not achieve the goal the minister wants to achieve.

Hon. Joseph Volpe: I guess my concern is one that was expressed by my colleague Mr. Bélanger a moment or two ago on another amendment, and that is that I'm not aware of the precise details of any of the other standards. I can only hold the minister accountable for the standards with which I have become familiar, or will become familiar, and which are codified in Canadian law. So I'm just wondering whether I'm holding the department up to a standard that we, as parliamentarians, really have no jurisdiction to impose directly. Willy-nilly, we say, okay, we want the standard that's established by ICAO, we want the one that's established by the Chinese, or by the Swiss, or whatever, without knowing what it is, unless we say "Please refer to the appendix".

Mrs. Susan Stanfield: Yes, that's the concern I would have with this. It's an uncertainty issue, as we've had with some of the others, where you're making a blanket statement and you're tying the minister's hands, and you don't actually know what the effect may be.

• (1600)

Hon. Joseph Volpe: So now I'm in the same position as Mr. Jean. I've kind of talked myself out of supporting two amendments so far by simply asking that question. Very simply, do we need it? Do we need NDP 3.1?

Mrs. Susan Stanfield: I would argue that you don't, because there's already a requirement for... We're a signatory to the convention, so we've already made the commitment internationally that we will, to the best of our abilities, comply with the standards of ICAO as set out, and in the case that we don't, we're required to notify the world that we're not meeting those standards. So we've already got that commitment on an international level.

I don't know that you need it in here, and I have concerns about the way this provision is drafted, that it may have other effects that aren't intended by the committee. Specifically, the words "by regulation" at the end of it are a concern. I'm not sure that actually helps the minister do what he needs to do in section 4.2.

Hon. Joseph Volpe: Perhaps from the point of view of members of Parliament who have a legal background, does that put the minister in an environment where he now has a phrase that's disculpatory because it cannot be enforced by Canadian law?

Mrs. Susan Stanfield: I'd have to think about that, but I think "by regulation" in this provision, at the very least, would cause some confusion when it's read with the rest of the provision, because section 4.2 is a listing of the responsibilities. It's kind of a high-level list of responsibilities and authorities that the minister has to administer the Aeronautics Act and to enter agreements and things like that. Not all of those responsibilities can be fulfilled by means of a regulatory instrument, and you wouldn't necessarily want it to have to be done that way. Some of those responsibilities...it would make it very difficult to negotiate the agreements if everything had to be done by regulation.

I'm not sure what the intention was of "by regulation" at the end of that provision, but I don't think it achieves a goal that you would want to have.

The only other concern I have is with the wording itself. I think it really constrains the minister, because it says:

shall ensure that aeronautical activities are conducted at all times in a manner

There's no ability in that wording for him to do anything different, and "shall ensure" is really difficult wording to live up to.

[*Translation*]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: The officials will even argue against amendment NDP-3 because they don't want to hear anything about compliance with higher safety standards.

I do not agree with Mr. Preuss. Far from binding the government's hands, the amendment we are moving would oblige the government to maintain the highest safety standards established by international organizations. We're talking not about countries but about organizations. We ourselves are members of most international organizations. In other words, we would commit one way or another to applying the highest standards. That would not prevent us from applying standards that are even higher than those in place today.

In my view, we must make a commitment to complying with the highest safety standards. My amendment has the advantage of bringing them within the framework of standards established by the international organizations of which we are a member. There is no question of setting aside the standards Canada has established. On the contrary, we can establish our own standards, while remaining in compliance with international standards. Mr. Chairman, I'm having some difficulty with the department's explanation.

[English]

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: Chair, I listened and I sort of buy into the arguments that would speak against BQ-7 in the sense of the confusion that might be created by having a reference in the law to the International Civil Aviation Organization and if they have lower standards, and so forth. So I'm prepared to vote against BQ-7, which will then bring us to NDP-3.1.

I was following with some agreement the arguments that I heard from the Justice representative, in that last sentence of that, "The minister may by regulation..."—and perhaps the minister may also by "executive decision", by "Privy Council decision", by "agreement", and so forth, so there may be more than just "by regulation" as a way of ensuring that aeronautical activities are conducted at all times in a manner that meets the highest safety standards.

So I'm very comfortable with that, and that's where the representative lost me. I do believe that it's quite normal to have in a law a statement such as "The minister shall ensure that at all times the highest standards shall be met". I don't have a problem with that, and it should be in this law. The difficulty, I'm starting to realize, is in the last part of that sentence, and I'd like to know how to replace it. Some suggestions might be in order here.

From the arguments and discussions I've heard, that's where I'm at. Perhaps we can dispose of BQ-7 and focus on NDP-3.1. I'm just trying to get us moving along here a bit.

• (1605)

The Chair: Thank you very much for that assistance.

(Amendment negatived)

The Chair: NDP-3.1, Mr. Julian.

[Translation]

Mr. Peter Julian: Mr. Chairman, with respect to the comments made here, I would say it is quite natural when we talk about the purpose of the bill to provide that assurance, an assurance that the minister has that responsibility. It then stipulates that the minister may take measures.

I understand Mr. Bélanger's comment to the effect that the words "by regulation" may be somewhat too restrictive. The amendment could be changed and made less restrictive. As Mr. Laframboise was saying earlier when talking about a similar amendment, it is important that we set out exactly what we intend the purpose of this legislation to be. I am sure that if we were to consult Canadians on this, most of them would agree in saying that what we are trying to achieve with this is very important.

[English]

The Chair: Comments? Any comments from the department on this?

Ms. Stanfield.

Mrs. Susan Stanfield: If you read the existing section 4.2, you'll see that all the paragraphs listed in that provision start with a verb. So that's part of the problem with the "by regulation" at the end. You've already got these verbs at the beginning that say how the minister is going to do things in some cases—cooperate, investigate, undertake, promote. So it's strictly a drafting issue with the "by regulation" there. Plus, the regulatory authorities under this act, for safety, are in section 4.9, and you'll notice that the section 4.9 authorities are given to the Governor in Council. The effect that has is that it means that when the minister wants to propose a regulation, it has to go to Treasury Board before it gets approved. It's a higher level of regulation-making power than the minister making a regulation. You may want to take that into consideration as well if your concern is a level of parliamentary scrutiny. That's one of the issues with the "by regulation" at the end of that.

The Chair: Monsieur Bélanger.

[Translation]

Hon. Mauril Bélanger: Mr. Chairman, I would like to move a subamendment to NDP amendment 3.1, that would remove the words "by regulation" at the end of the section, in the French and English versions.

[English]

The Chair: So we have a subamendment proposed by Mr. Bélanger that would eliminate the last two words.

Mr. Jean.

Mr. Brian Jean: I'm not sure if it makes sense. To me, it doesn't, but maybe I'm missing it. So in the discharge of the obligation, you're saying the minister may...?

Hon. Mauril Bélanger: Construct, operate, and maintain aerodromes, control and manage aircraft, and provide relating services.

Mr. Brian Jean: Excellent. Thank you very much.

The Chair: So it's giving him the option of how he does it, but telling him he has to do it.

Hon. Mauril Bélanger: Correct.

The Chair: Comment?

• (1610)

Hon. Mauril Bélanger: I'd have to look at all of clause 4 just to make sure that's there. That's why we have legal people; they will tell us that. But that might work.

The Chair: A subamendment is votable.

Mr. Julian.

[Translation]

Mr. Peter Julian: I support the subamendment for the stated reasons. It frames the amendment well.

[English]

The Chair: Thank you.

We have a subamendment to remove the last two words in both French and English.

(Subamendment agreed to)

The Chair: On the amendment, Mr. Jean.

Mr. Brian Jean: Mr. Chair, just before we move on to the vote on the amendment, can the departments provide us their positions on that? Do they see any problems, especially from Justice's position?

Mr. Franz Reinhardt: First of all, by looking at all the amendments, you were removing paragraphs 4.2(1)(b) and (c). They need to remain there. You were going too deep.

The Chair: It says, "by replacing lines 1 to 4 on page 4".

Hon. Mauril Bélanger: Lines 1 to 4 are not (b), (c), and all of those.

Mr. Ed Fast (Abbotsford, CPC): But it says, "before paragraph (d)".

Hon. Mauril Bélanger: Mr. Chairman, this is why I need to see the entire act as it is now. I've left that in the office.

My understanding of what's being proposed here—Mr. Julian perhaps can help—is that this was to come at the first of all of these paragraphs. Basically I thought it was replacing lines 1 to 4, which is essentially....

Well, I understand what the question is and I can't answer it. I'll just wait until we get an answer.

The Chair: Mr. Fast.

Mr. Ed Fast: Mr. Chair, I have another question for our legal counsel, Ms. Stanfield.

I'm just concerned that we're going to be attracting litigation right off the get-go. The wording we are using right now is "in a manner that meets the highest safety standards established", followed by a comma. But it begs the questions, established by whom? Immediately we're introducing an ambiguity into the legislation that is going to attract litigation.

Why are we even dealing with this clause? I have serious concerns that we're creating a monster here in clause-by-clause. We're opening up more avenues for litigation when in fact we should be introducing clarity into this bill, if that's necessary.

Mrs. Susan Stanfield: I agree that it introduces uncertainty. That's the first question anyone is going to ask when they interpret this provision: established by whom?

Mr. Ed Fast: The minister acts by way of regulation or some other method. I'm not sure that's the issue here; it's the ambiguity within this particular amendment. I just don't grasp it.

Mrs. Susan Stanfield: Yes. There really isn't anything else I can say about it. The drafting raises a question, definitely.

Mr. Ed Fast: Mr. Chair, could I ask the Liberal members to listen to legal counsel? I'm really concerned.

An hon. member: We are listening.

Mr. Ed Fast: Sorry, you were chatting. All right. You understand the issue then.

Hon. Joseph Volpe: Perhaps not as well as you do, Mr. Fast, but we try.

Mr. Ed Fast: You flatter me, sir.

The Chair: Mr. Julian.

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

As I mentioned when we started this process, because of the speed involved, we knew we'd encounter from time to time some typos and errors in drafting and translation of the amendments. This is one of those cases. It should say, "before paragraph (b)", not "before paragraph (d)".

I think we're going to run into this regularly. It is good that the opposition parties were all able to get their amendments in by that date, but it's inevitable that we will have slight translation errors or slight typos that we have to correct. It's just a normal matter of course.

The Chair: I believe Mr. Julian is saying that in proposed subsection 4(1), where it says "before paragraph (d)", it's a typo error that should read "(b)", as in Bob.

Is that clear for everyone?

● (1615)

Mr. Peter Julian: Yes, that's right.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: The question I asked earlier of the representative, Ms. Stanfield, was precisely related to that. This particular clause might not necessarily constrain the minister, but remove him from the responsibility that accrues to the minister making the rules and ensuring that they are enforced by establishing uncertainty here—as I say, established by whom? That's why I asked those other questions regarding which standards.

The underlying question was always, whose standards? And I think I actually asked that. Can he be held to any standard other than the Canadian one? I think it's the Canadian law that is going to apply; it's not another one.

Mrs. Susan Stanfield: He makes the policy, and then the legislation or the regulations are created to reflect the policy decision. He makes the policy decisions in the international context in aviation because of various agreements and treaties.

In this provision, if I had to interpret it, I would argue it means that aeronautical activities are conducted at all times in a manner that meets the highest safety standards that are established. If the question mark is "by whom", in the absence of anything else, it's the minister, so it's kind of circular.

To get back to the other provision being amended to say “paragraph (b)”, when you interpret the amending formula—the stuff in bold in the motion—in order to understand what that means you have to look at the act in force now. The effect of what you're proposing is that paragraph (a) in the existing act will be wiped out. Right now paragraph (a) reads, “promote aeronautics by such means as the Minister considers appropriate”. I question whether that's really your intent or whether you instead mean that “the portion of section 4.2 of the act before paragraph (a) is replaced by the following”.

Hon. Joseph Volpe: Every member around the table would intend that the minister always be held to a standard that includes everything, even if we don't know it. The responsibility of the minister and his department is to know it, for the purposes of greater safety. It isn't the intention of any member around this table, I think, to limit him or her.

Mrs. Susan Stanfield: Okay. So it's inadvertent, then.

The Chair: Mr. Bell.

Mr. Don Bell: The issue that Mr. Volpe and Mr. Fast raised addressed the issue of the highest safety standards, as established by whom. That was addressed in BQ-7, which we've defeated, which talked about international organizations, including the International Civil Aviation Organization. So Mr. Fast, the BQ-7 did define who we were talking about in that case.

If I understood the answer of Ms. Stanfield, if we said here—and I'd like to get her comment—“the highest international safety standards”, would that work?

Now in paragraph (a) I think I heard you say there is a reference to...no, it's vague, it says “to the standards established by the Minister”. Is that what you said?

Mrs. Susan Stanfield: That's the wording that's in there now. If you were interpreting it, that would be how you might answer the question.

Mr. Don Bell: But aeronautics isn't something that's just within Canada; we're dealing with an international arena.

Mrs. Susan Stanfield: Yes.

Mr. Don Bell: We're talking about international safety standards. I think we're saying we want Canadian standards to either meet or exceed those international standards. But we don't want to be limited by international standards that are lower than what we think would be appropriate in Canada.

We should be prepared to accept the international standards as the minimum for whatever we have because we're dealing in an international market. Is that a fair assumption?

Mrs. Susan Stanfield: It's a policy question.

Mr. Don Bell: Mr. Reinhardt, or Mr. Preuss, I presume we want to meet or exceed any international standard that applies to safety?

•(1620)

Mr. Merlin Preuss: That's the idea.

Mr. Don Bell: We would never want to say we want to have less safety than some other international—

Mr. Franz Reinhardt: No, but in our international convention under ICAO, it's possible for countries, or signatories to ICAO, to

file some differences regarding some situations, as previously mentioned by Mr. Preuss here. But in general, yes, we meet more than the basic international requirements.

Mr. Don Bell: So would a way of addressing the issue raised in this be to go back to the words, “meets or exceeds” the highest international safety standards?

The Chair: May I just suggest that based on the comments made earlier, if we again measure ourselves based on an international standard, it may be less than what we're prepared to accept in Canada.

Mr. Don Bell: I was saying “meets or exceeds”. I'm saying “not less than”.

The Chair: There may be some, though, that we choose not to exceed or meet, and then we would file a—

Mr. Don Bell: You're saying there are some safety standards we don't want to bother meeting, that there'd be international safety standards that we don't think are worthy?

Mr. Franz Reinhardt: Well, not necessarily that way.

The thing is that currently in this legislation we have in the purpose clause, that the minister be able to meet the international standards. Under section 4.9, we also have a rule-making authority allowing the Governor in Council to make regulations to meet international standards. We have all of those authorities.

Now, in the ICAO convention of 1944, signatory countries can always file some differences to some requirements of ICAO. For that reason, I would suggest that the way we have it now is the best of both worlds; we have all the regulatory authority to meet the international regulations, and we're not necessarily bound by some on which we would have to file a difference.

The Chair: Mr. Preuss.

Mr. Merlin Preuss: I have another example for you. We have a charter that doesn't permit us to discriminate on the basis of age. There is an ICAO rule that discriminates against age; we filed a difference against that.

There's a better example than the one I spoke about, with Captain Maurino, to give you an example of where we just can't do some of these things.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: However, circumstances may arise in which certain individuals or groups may feel that you are not ensuring, or going far enough regarding, safety. That is why safety management systems are installed. You think you're the very best, nonetheless several witnesses told us that at times you may be wrong. That is why I think I will join those who are asking that this include a commitment on your part to meet the highest safety standards, be they international or Canadian. What we're saying is that the minister must commit to meeting the highest safety standards.

If you wish to assist us, let us try to include this in this part of section 4 so that the minister commits to meeting the highest safety standards. Be they international or Canadian, I want to ensure that at all times you will be meeting the highest safety standards.

If you want us to break this impasse, then you, the government's legal experts, must tell us where to include it. I don't mind where you include it, but I don't want it to go unmentioned. Several witnesses told us that you may make mistakes. I want to ensure that you will not make mistakes and that each time you take a position, you will meet the highest safety standards. I will support this. I tried to say that these would be international standards. They can be Canadian standards but the important point is that they be the highest standards. Let's put this somewhere in this section where it suits you and where it suits us.

[*English*]

The Chair: Monsieur Bélanger.

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

In terms of this amendment, my thought is that the intent of this proposed subsection 4.2(1) is that it would be the header of all of the paragraphs that follow, from paragraph 4.2(1)(a), 4.2(1)(b), etc., to paragraph 4.2(1)(k), I think it is. Whether it's by putting a paragraph before paragraph 4.2(1)(a) or 4.2(1)(b), or whatever, I think that's the intent. My suspicion is that it has to be paragraph 4.2(1)(a). That's my first point.

Second, in terms of standards, would it be accurate to say that in the case of proficiency testing of pilots, Canada's standards are lower than the international ones, which I believe require testing every six months, while we now only require testing every two years?

The Chair: Mr. Reinhardt.

Mr. Franz Reinhardt: In those situations, we have alternate means of ensuring as high a level of safety as the ICAO was requiring. There are other LOFT line indoctrinations; there is other additional training required during the year, so that meets the equivalent level of safety as was imposed by ICAO.

•(1625)

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Chair, I think we've had some helpful suggestions from all four parties here. I would suggest, given that we will need to take a few minutes, I think, to work through what we want to see in the bill, that this is a clause we should stand aside, given that the time we've reserved is almost up. I would expect that we'd be able to tackle the two issues, this issue and the previous

issue, if we stood this aside until Wednesday first thing, and I'm sure we'd be able to come to a conclusion.

The Chair: Are there any comments?

Mr. Fast.

Mr. Ed Fast: Again, Mr. Chair, I want to focus our attention on concerns that I raised and that were echoed by Ms. Stanfield. What we're trying to do is avoid ambiguity in the legislation. We're trying to avoid any needless litigation that will arise in the future because of the wording of the clause.

Ms. Stanfield, are you satisfied that, given the way the current bill is worded, without this particular amendment, the desires expressed here at this table, especially by the opposition side, to achieve the "highest standards possible" will actually be met by the current bill rather than by this amendment? Is the amendment we're talking about necessary to achieve what the members at this table—I think—generally want to achieve?

Mrs. Susan Stanfield: In my opinion, no, but—

Mr. Ed Fast: Can you explain why?

Mrs. Susan Stanfield: I believe when you look at all the pieces put together that Mr. Reinhardt referred to, we've got the link into ICAO and the regulation-making authorities, and we have statements in the existing paragraphs in section 4.2 that make it clear that the minister has responsibility for safety and security and for doing things to make sure those are at a level that will be acceptable to Canadians. I think the risk of introducing an amendment like 4.2 is that it creates uncertainty, the way it's drafted right now. It's very difficult to assess how that will be met, whereas right now, under section 4.2, the minister has authority to do the things he needs to do that aren't regulatory—build the infrastructure, make the agreements with people, and provide funding.

Section 4.9 of the act is where the real nuts and bolts of the safety regulation come in, because that deals with the Governor in Council's authority to make the rules, and we're already bound to make rules that at least meet, and in most cases exceed, the ICAO minimum requirements. So I think it's actually covered off.

Mr. Ed Fast: So you're recommending against this amendment?

Mrs. Susan Stanfield: Yes.

The Chair: Are there any other comments?

Mr. Julian.

[*Translation*]

Mr. Peter Julian: Mr. Laframboise was first.

[*English*]

The Chair: Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: I am very disappointed in the minister's response. Somehow, we, as committee members, want to ensure that Transport Canada and the minister will be bound by the highest safety standards. I think we're doing our job, but there is an attempt to lower the bar. I think you're telling us that the bill falls short of our wishes. Mr. Chairman, I have a major problem. I want this bill to meet the highest safety standards. I do not want to reinvent the wheel but I do want compliance with the highest safety standards. This means that we would have a bill that would lead in certain cases to the highest standards not being met for administrative reasons. Quite honestly, I have a problem with that.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian: I propose, Mr. Chair, that we stand aside the amendment and come back to it on Wednesday.

The Chair: Are there any comments?

We'll be resuming again on Wednesday, then.

Again, I understand that phrases change and amendments get introduced, but I think it's important that if you have questions for the department on your amendment, perhaps we can clarify them ahead of time, if there are words that need to be rectified or changed. I think debate continuously on one or two words could be resolved before we get to this, if there's willingness by the department to have that discussion with all the members. I'm sure the department has a copy of all the amendments and would be willing to do that.

(Amendment allowed to stand)

(Clause 4 allowed to stand)

The Chair: With that, we'll suspend for a couple of minutes while we clear the room and bring in our new guests.

- _____ (Pause) _____
-
- (1635)

The Chair: Welcome back.

Moving forward on the agenda, we're going to deal with the Department of Transport. With us today are Marc Grégoire and Luc Bourdon.

Welcome.

We are discussing rail safety in the next 45 minutes or so. Do you have a written presentation that you would like to make?

I would ask for the committee's indulgence to please give Mr. Grégoire the floor.

Mr. Marc Grégoire (Assistant Deputy Minister, Safety and Security, Department of Transport): Thank you very much, Mr. Chairman.

We're here to respond to the committee's interest in exploring the subject of railway safety in Canada.

I will take some time to provide you with a description of the general foundation for railway safety in Canada, and then take you

through the actions that Transport Canada has taken to respond to the more recent safety issues culminating in the minister's decision to launch an independent review of the key legislation governing railway safety in Canada.

[*Translation*]

Today I am joined by Mr. Luc Bourdon, Director General, Rail Safety. Luc has a considerable amount of experience in the rail sector. After working for 19 years in the industry, he joined Transport Canada, first in the Quebec City region and then here.

It is important to note that, as with companies in other modes of the transportation industry, railway companies are responsible for making the appropriate decisions to ensure that operations are safe and that they are in compliance with federal regulations, standards, and rules including requirements for infrastructure, equipment, operations and employee qualifications.

The railway safety management system regulations came into force on March 31, 2001. They require all federally regulated railway companies to document, implement and maintain a formal framework integrating safety into day-to-day operations, including safety and performance targets, risk assessments and maintaining and evaluating processes.

[*English*]

The implementation of a safety management system enables a railway company to demonstrate their commitment to safety by ensuring that it is a priority throughout the organization. This provides an additional level of safety to enhance Transport Canada's oversight program.

Transport Canada actively monitors the railways, and when railway safety inspectors discover an immediate threat to safe railway operations they have the legal responsibility and the authority to issue safety orders restricting the operation of railway companies. They may also place restrictions on the use of roadway crossings if they find a safety problem.

[*Translation*]

With the committee's interest in the more recent derailments of CN, I'd like to highlight the government's immediate safety action following an increase in CN's mainline track derailments in 2005. Transport Canada performed expensive targeted inspections and a company-wide audit of CN's safety management system.

- (1640)

[*English*]

To give you a sense of the scope, the inspections covered CN Rail operations across the country, examining 230 locomotives, 3,000 freight cars, 1,900 miles of track—or 3,040 kilometres, if you want—over 900 grade crossings, and 160 warning systems. The four-week audit of CN's safety management system from November 14 to December 10, 2005, focused on assessing CN safety management practices throughout the company.

[Translation]

Following this initial focused surveillance, the minister met with the president and chief executive officer of CN regarding safety issues on two separate occasions in 2006, and Transport Canada performed an additional series of targeted inspections on CN's property during the week of July 17, 2006. The results confirmed the need for immediate corrections to CN's safety management systems.

[English]

The department also took direct enforcement action, issuing 54 enforcement actions in fiscal year 2005-06 and 75 in 2006-07. These include 24 orders regarding CN operations and 52 notices on a wide variety of safety issues.

For example, while the Transportation Safety Board continues to investigate the cause of the CN derailment along the Cheakamus River in British Columbia in August 2005, Transport Canada immediately issued an order limiting train lengths on high-degree curvature, steep-gradient trackage in that area. Other actions taken by the department include issuing CN a notice and order imposing immediate operational restrictions on locomotives in the Lillooet subdivision as a result of the derailment near Lillooet, B.C., on June 29, 2006, which resulted, unfortunately, in two crew member fatalities.

[Translation]

On July 24, 2006, the Minister of Transport issued CN a ministerial order under section 32 of the Railway Safety Act, ordering the company to take the necessary corrective measures to address the deficiencies in the CN safety management system. While CN initially appealed to the Transportation Appeals Tribunal of Canada for a review of this order, senior management of the railway met with Transport Canada officials and agreed to provide a corrective action plan, which would bring the company into compliance with the ministerial order. CN submitted their action plan to Transport Canada on October 18, 2006, and following a review which confirmed that the requirements stipulated in the order had been met, on November 15, 2006, the minister informed CN in writing that the order is considered spent.

[English]

As you may know from recent media coverage and as is normal practice in these types of cases, the department was not able to release documentation related to the order, including the audit and results report, without following the appropriate access to information legislation. This process has now been completed, and the final inspection and audit reports are now available on the department's website.

To set the safety context for our discussion, it's important to know that according to the Transportation Safety Board figures, CN main track derailments decreased by 28% in 2006 over 2005. This number was reduced by a further 4% in the first quarter of 2007 over the same time period in 2006.

Although, as you have seen, Transport Canada has taken significant safety enforcement action across Canada over the past years to address these safety issues, it has become apparent that the current regulatory framework may not provide the full set of tools to effectively deal with them. There's also a view that the current

framework needs to be modernized and better aligned with safety legislation in place for other modes of transport in Canada.

• (1645)

[Translation]

Accordingly, in December 2006, the government announced the Railway Safety Act review to improve railway safety in Canada and further promote a safety culture within the railway industry, while preserving and strengthening the vital role this industry plays in the Canadian economy.

More recently, the minister has announced an independent four-member panel that will conduct this important exercise. The panel is consulting a wide range of stakeholders, including the public, railway companies and their industry associations, railway company employees and their unions, railway customers, provinces and territories, municipalities, aboriginal and environmental groups as well as Transport Canada and other federal government departments and agencies. Efforts will also ensure an extensive range of access for input, including a website to accommodate input from the public.

[English]

I understand that Doug Lewis, chair, and Tim Meisner, executive director of the panel, met with the committee chair on May 1, and that the panel will provide a brief to study in the near future. The panel will prepare a report for the minister with findings and recommendations to improve railway safety, including possible amendments to the Railway Safety Act. This report is to be submitted by October 2007.

Thank you. It will now be our pleasure to take your questions.

The Chair: Thank you, Mr. Grégoire.

For the information of the committee, after meeting with him I received a letter from Mr. Lewis with a list of the available dates for their cross-country tour, and also dates that he would be available to meet with our committee. I will be forwarding that to the members.

Mr. Bell.

Mr. Don Bell: Thank you.

Welcome to our two guests from Transport Canada.

First of all, Mr. Chairman, I'd like to advise the committee that I did attend the panel's hearings in Vancouver. I had an opportunity, at Mr. Lewis's invitation, to explain what I felt the difference was between the work we were doing in this committee and the work the panel was doing, that they were indeed complementary, and the reason this committee had pursued the decision last October to proceed with this review.

To Mr. Grégoire, back in April this committee heard from Gord Rhodes, one of the gentlemen who was on the train that derailed in Lillooet. His two co-workers died in that locomotive. He said that, in his opinion, had Transport Canada's safety audits been released earlier—I'm going to the point you raised, that the information was not released—as had been previously promised by Jean Lapierre, minister at the time, it may have prevented some of these accidents.

When our committee met last November, I asked Deputy Minister Louis Ranger to release the audits. He replied that as a policy it does not disclose the results of these audits because they consist of third party information. I presume that's what you're responding to in your question on page three of the presentation you just made.

Do you think it makes sense that audits paid for by the Canadian taxpayer and conducted for the express purpose of public safety, whether it be for rail, aeronautics, or anything else we're doing as a committee of Parliament, only be made public through an access to information request and not to elected members of government such as are represented on this committee?

Mr. Marc Grégoire: I cannot comment on the first part of the question; however, this is the rule we follow for all audits. Sometimes it is privacy information, sometimes it is third party. It's third party information all the time because we're auditing a company and we need the consent of the company.

Normally we don't encounter problems. Normally we do the audit, we present the audit to the company, the company reviews it, comments on it, and puts in a company action plan to address the concerns we have identified. Normally we publish the audit report along with the action plan of the company. It's a bit like when we ourselves are audited by the OAG. We do exactly the same thing, except we cannot oppose being published.

• (1650)

Mr. Don Bell: Mr. Chair, these companies are not ordinary companies. These companies are federally regulated and enjoy the ability to operate through federal approvals. When we're dealing with companies, whether it's aeronautics, airlines, or railways, that are dealing with passenger safety or the safety of communities or the environment that can occur as part of a derailment, I think there needs to be a responsibility that if we're trying to look into problems we have the ability to get that information and do the oversight that's necessary. That's more of an opinion than a question.

In your statement today you made reference, which was repeated by CN, that incidents were down by 28% in 2006 over 2005 and down again a further 4% thus far this year, these first four months. Would you say, based on your knowledge of the phase one and phase two audits, that you're happy with CN's current status, the current response, or the way they're implementing their safety management plan?

Mr. Marc Grégoire: I am happy with the trend, but I'll let Luc answer on the details.

Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport): I think there's still some improvement to come. Statistics are issued by TSB. We don't control them. You may want to ask TSB at one point about the statistics, and if there's anything that may be added concerning the previous year. I think they have some issues on that.

As far as we're concerned, we're seeing some improvement at CN. However, following the 2005 audit, as Mr. Grégoire mentioned, we only got their corrective action plan later in 2006, which will be verified through a focused audit in the next few months to verify that everything they have in that plan has been effectively implemented.

Mr. Don Bell: I guess I'm concerned that those reports came in during November or December 2005, and it would take them until October 2006 to respond. And during that period of time, in June 2006, we had the fatality.

I hear the comment that they've reduced over 2005. Well, 2005 was one of the worst years. You don't compare to your worst year and say you're better. And it can be the last year; I appreciate that.

Another issue I have, referring to British Columbia in particular, is that the committee was told by more than one witness—from CN Rail employees, some former, and from B.C. Rail—that when it was a provincial railroad, there were higher standards. It appears that those standards, the general operating instructions, were not the same, or were not applied in the same way.

Can you comment on that? Do you feel that our federal railway standards currently imposed on CN in B.C. are less than what were imposed on B.C. Rail by virtue of provincial standards, or because of the terrain?

Mr. Luc Bourdon: No, they're quite similar. Our Pacific region was heavily involved in the transition between B.C. Rail and CN Rail. I wouldn't say the rules they had in place were 100% harmonized with federal, but almost; it was very close.

The Chair: Thank you.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you very much, Mr. Chairman.

First, I will be referring to your opening remarks as well as comments we heard during previous testimony. What upsets me is that we're dealing with an industry that was subject to a safety management system since 2001. It was the 2005 accidents that ultimately led you to take a closer look at CN's situation. You said yourself that you ordered a more specific investigation in 2005.

When I asked the Transportation Safety Board if the safety management systems had improved safety in the railway sector they could not confirm this. I can understand that—in 2005 fatal accidents occurred. If I look at the facts objectively, I can see that there was one accident in Montmagny, Quebec, in 2002 or 2003, and another in 2007, that is, after you had conducted your analysis at CN, after you had gone through the whole process.

I'm trying to understand. Surely something, somewhere, is not being done properly. You'll probably say that it's not you, but something's going on. From what I can see, there have been just as many accidents. Your numbers have barely changed. There may have been a small improvement.

What can we do to discipline this industry?

• (1655)

Mr. Marc Grégoire: As I mentioned, the act needs a few more tools to make it more enforceable. The only tools we have are the power to issue notices and orders, or to take court action, whereas under other laws, such as the Aeronautics Act, we have a whole range of tools, including monetary sanctions and the power to directly impose fines. Those fines are significant, but since you are reviewing the Aeronautics Act, we would propose increasing those even more. It's a way of bringing about discipline, if you will, especially when dealing with extremely profitable companies.

We do not have those tools today. We use the tools which are at our disposal. We have often issued notices and orders. For example, we can impose speed limits on rail sections, significant reductions or operational changes, as we did in western Canada with regard to the length of trains, or specific operational measures. But we do not have the range of tools you are talking about.

So what can we do? You are saying that the SMS is not working. As I already explained to you, the SMS marks an important change in culture which we cannot measure after just a few years.

Mr. Mario Laframboise: Basically, under your audit system, between 2001 and 2005, you nevertheless reviewed the SMS and did not realize that the condition of the rails or of the equipment was deteriorating. After several accidents happened, it finally took a special investigation for you to realize what was broken within CN. If those investigations had not taken place, things would probably have kept on deteriorating.

Employees of the company who testified before the committee told us that they had never heard about the safety management system. That's rich! It has been around since 2001. Men even lost their lives. So don't tell me that you did your job. Your monitoring system failed to detect what was wrong with CN's network. Finally, in 2005 and 2006, you conducted specific investigations which is

when you realized, upon taking a closer look at your locomotives, that there were particular problems.

Today, Mr. Bourdon, you are telling us that the situation has not been corrected yet. Men had to die for you to reach this point. That is extremely deplorable. This happened under the Liberals. Today, people are asking questions, but something happened which resulted in your not being able, with your monitoring system, to detect the fact that your network was deteriorating, and that this was causing more and more accidents to happen, in a nutshell.

Mr. Luc Bourdon: No. I believe we did realize the network was deteriorating. We took measures. The number of notices and orders increased. The number of court cases too: we launched six court cases, some of which have not yet been resolved. I learned today that there was another one and two further ones could happen. We sued. During that period, no other railway in Canada apart from Canadian National was taken to court. Since 2002, we launched six court cases. We conducted inspections, we made surprise visits, we worked within the limits of the act. As Mr. Grégoire mentioned, we probably don't have enough tools under the current act. We went after CN much more than after other railway companies.

We had already audited CN's safety management system once. Since it was the first audit of the safety management system, we worked a little more closely with the company. The results were not excellent, but no worse than elsewhere. We worked with CN to improve the situation. But then we realized that the company was complying less, so we did what we had to do.

Then the two unfortunate accidents happened in 2005. The first thing we did was conduct a focused investigation. Mr. Grégoire shared the results of that investigation with you. We then completely reviewed the safety management system in specific areas. That's when we produced a report, which took a while to come out. Several things were done to attempt to correct the situation. As I said, during that period, only CN was taken to court.

• (1700)

Mr. Mario Laframboise: Except that the incompetent maintenance continued. This means that what action you took was not enough to deter such a huge company. Three, four or five court cases are nothing for a multinational. You either did not have enough staff, enough time, or something else was missing.

I'm all for jailing the president, but given how much senior officials are paid, several of them will end up in jail if we don't take care of them first. We can always amend the law to make all senior officers liable, but we would also have to ensure that, throughout the entire network... In 2007, some employees told us that they did not even know of the existence of the safety management system. Perhaps the company did not do its job, but perhaps Transport Canada also did not do enough to ensure that all railway employees understood that the company had obligations. I don't know, but surely there are questions we must ask ourselves about this entire situation.

Mr. Luc Bourdon: The safety management system mandates that every employee must be involved. This was confirmed in our audit. Employees confirmed exactly what you said, namely that in several cases, they were not at all informed about the safety management system.

[English]

The Chair: Mr. Julian.

[Translation]

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

I will continue with Mr. Laframboise's line of questioning. If I understand correctly, you cannot impose sanctions or consequences on railway companies when they violate safety standards or standards established by Transport Canada.

Mr. Marc Grégoire: No, there are none, except for the notices and orders, which we have frequently issued. In fact, a ministerial order was issued under section 32 relating to the SMS, which had just been implemented, in order to force CN to provide us with a plan of action to remedy the situation. We don't have any tools, we cannot suspend CN's operating licence, for instance, as we could very easily do in the case of Air Canada. We cannot impose a sanction on CN as we frequently do on airlines, for example. The law does not give us any of these tools. We can only take delinquent companies to court. And then it is the judge, the court, that decide on the amount of the penalties.

Mr. Peter Julian: There are six cases before the courts today, but none of them has been resolved.

Mr. Luc Bourdon: No. Since 2002, they were found guilty twice. The other cases have not yet been resolved.

Mr. Marc Grégoire: But there were cases even before then.

Mr. Luc Bourdon: Yes, it happened in the past, but to come back to the dates mentioned by Mr. Laframboise, since 2002, two cases were disposed of. There are still four cases before the courts. I was told today that in fact there are five cases.

To answer your question and to continue with what Mr. Grégoire was saying, section 31 of the act authorizes us to issue notices and orders. Then, if there's non-compliance with section 31, we can take legal action under section 41. But there's nothing we can do between these two steps.

Mr. Peter Julian: All right. Was this in the law before the SMS was created?

Mr. Luc Bourdon: No.

Mr. Peter Julian: It was never in the Railway Act.

Mr. Luc Bourdon: Not since 1988, so not since the current act came into force. I can't speak to the former Railway Act.

Mr. Peter Julian: Thank you for that clarification. I think that basically answers my second question. We know that the companies are obliged to report on the SMS. However, if they produce a report which makes all kinds of promises, such as training employees, but then they don't do so, there is no way of monitoring the situation, except by applying the article you mentioned, which involves going before the courts.

● (1705)

Mr. Luc Bourdon: In fact, every year, they have to provide us with an update of their SMS which we briefly examine to make sure it is in accordance with the regulations. So that does get reviewed.

As for training, under existing rules training is mandatory. For example, there are rules which say that the people who work on trains must receive training. There is an ongoing independent review of the SMS.

A little earlier, the chairman referred to the Railway Association of Canada and to the panel. The Railway Association of Canada submits a report to the panel which ensures that the Railway Safety Act is applied. In that report, we were criticized as having implemented the SMS as another layer on top of security. But we never got rid of the system which was in place before. One system is on top of the other. But we were also criticized for that. I think that the industry believed that once we had adopted the SMS, we would get rid of the other system. But that never happened in the railway sector.

Mr. Peter Julian: So the review process is important. How many inspectors work in the rail network today?

Mr. Luc Bourdon: There are 101 inspectors.

Mr. Peter Julian: Is that the number of positions or of inspectors?

Mr. Luc Bourdon: Inspectors.

Mr. Peter Julian: How many positions are there?

Mr. Luc Bourdon: One hundred and one.

Mr. Peter Julian: There are no vacancies?

Mr. Luc Bourdon: Two engineering positions in Ottawa are vacant: one engineer left for a smaller centre and the other one went to a department. As far as I'm concerned, to the best of my knowledge, we have everyone we need in the smaller centres. One or two may have retired, but certainly no more than that.

Mr. Peter Julian: The perception of the public is that there have not been any improvements. I'm looking at the statistics you gave us. There have been many major incidents in the news, especially in our neck of the woods. Mr. Fast, Mr. Bell and I come from British Columbia. Every time there is a derailment, the public becomes even more skeptical, because it does not believe that things are being well-managed.

Has there been a change in the way CN reports accidents? Is it possible that minor accidents are not reported?

Mr. Luc Bourdon: The people from the TSB could answer that question. They are the ones who collect all the information; we don't do that. We have the same kind of access you do to the statistics they compile following accidents which are reported to them.

Mr. Peter Julian: So it is possible then.

Mr. Luc Bourdon: It's absolutely possible. Anything is possible.

Mr. Marc Grégoire: It's all the more possible because the TSB regulations are different from the American ones. In the United States, accidents are only reported if a certain level of material damage is caused to the equipment, whereas here, in Canada, any type of accident is supposed to be reported. In theory, they should be reporting more incidents than the Americans. But we don't know if that actually happens.

Mr. Peter Julian: I see that you are a bit frustrated by the fact that your hands are tied as far as imposing penalties is concerned.

Imagine that we are in 2001 and you are in charge of redesigning the entire safety management system which is to be implemented. Would you completely change the approach to how the Canadian public is to be protected?

Mr. Marc Grégoire: When you refer to the approach, are you asking whether we would question the relevance of implementing the SMS?

Mr. Peter Julian: No, I mean how the SMS would be overseen, supervised.

Mr. Marc Grégoire: I don't think that's where the problem lies. The SMS, in this area as in the field of aviation, is another layer which comes on top of the current regulations. We are not replacing the regulations, we are simply adding another layer. The problem does not lie with the regulations per se, but with the difficulty in enforcing them. To repeat what Mr. Laframboise said, it's hard to impose discipline.

• (1710)

[English]

The Chair: Mr. Fast.

Actually, go ahead, Mr. Jean.

Mr. Brian Jean: Mr. Chair, Mr. Fast has relinquished his time to me. Thank you.

I want to carry on with the line of questioning of my friend Mr. Julian across the way, and that is in relation to accidents and statistics. I did some investigation of this. As most of the committee members are aware, the U.S. has much different reporting standards from Canada. In fact, if you look at them, we have heard time after time in this committee that Canada has the safest system in the world for rail, but when you look at the U.S., their accident rate dropped almost 20% from 1989, from 4.7 accidents per million train miles down to 3.5 in 2006—and that's from 1989 to 2006. In Canada it went from 12.4 to 11.9, or barely a 5% decrease in the same time.

I'm wondering, first, why we have not done the same, and if there have been any studies or initiatives towards having an international standard for reporting of accidents. I know that the U.S. standard is monetary; I think it's \$8,700, and it's covered by regulations. Why don't we adopt a similar standard, so we can compare apples with apples and see how our industry—which, quite frankly, for the most part, is a duopoly, with two major train operators—compares? Why don't we adopt an international standard, including Australia and the U.K. and most of Europe and the United States, so we can see apples with apples and actually be able to decide what's going on?

Mr. Luc Bourdon: It's mainly because, I guess, we don't agree on what that standard could be. There's been discussion, as we do have a committee that looks at harmonization between the two regulatory

regimes. And as you mentioned, in the rail industry, the FRA calculates a tab based on a monetary threshold. As long as you're above that threshold, it becomes a reportable accident.

I don't believe the reporting of accidents should be based on a threshold, but rather on the accident or circumstances that led to an accident or incident. That's why, when you compare the ratio in the States with the one here, you're not comparing apples with apples.

Mr. Brian Jean: In fact, they're totally not apples to apples—

Mr. Luc Bourdon: Yes, absolutely not.

Mr. Brian Jean: —because even though there's a monetary threshold, the reality is that in the United States they have to report anything that is caused on or near the line—anything at all, or any type of injury, including a stubbed toe, whatever it may be. We don't have to do that here in Canada; it has to actually be a serious injury. So it could actually be argued that the contrary should be true, that the United States should have a much higher threshold.

Mr. Luc Bourdon: There are two things: train accidents and personal injuries. For personal injuries, in the States they have a different regime from us; everything requiring more than first aid treatment becomes reportable, and they have guidelines explaining what the first treatment is. In Canada, it's whatever's considered a disabling injury, which is lost time, modified duty, loss of a limb, fatalities, and things like that.

So I would argue that in terms of personal injuries, when you compare both regimes, they are probably quite similar—although you may get a few more reportable injuries in the States, because they calculate more than the first aid treatment.

A train accident is a different thing: it's a monetary threshold.

Mr. Brian Jean: I'm reading from the federal railroad administration regulations, title 49, part 225 of the code, and it says that other incidents would be any death, injury or occupational illness—occupational illness is a pretty wide category today, with litigation—of a railroad employee that is not the result of a train accident or a highway-rail incident. It includes just about anything.

Mr. Luc Bourdon: It's the same here.

Mr. Brian Jean: Can you provide to the chair and to the committee any ongoing studies or just a mandate, some information we can see that would make sense? Right now it doesn't make sense, not to me and I don't think to any other member around the table, and most Canadians would disagree that we should have a separate reporting system from the U.S. or other major countries.

Mr. Luc Bourdon: As I said, personal injury covers everything that happens on the railroad, regardless of whether you're on a train or not. If you're working in a shop and you get injured, it's reportable.

Mr. Brian Jean: In the U.S.

Mr. Luc Bourdon: In Canada as well.

Mr. Brian Jean: It's an incident, though, is it not?

Mr. Luc Bourdon: You're going up to the lunch room, you trip on the stairs, it becomes a reportable injury. It's counted.

Mr. Brian Jean: I would appreciate any information you can give us, because that's not what the Internet says and that's not my information. So I'd really appreciate that.

Thank you.

The Chair: Mr. Fast, do you want to follow up? You have two and a half minutes.

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

First of all, I was a little disappointed to hear all of the blame being placed at the feet of our officials, because ultimately it's the regulatory and statutory framework that hamstring your ability to do what you believe needs to be done. In fact, I go back to Mr. Grégoire's testimony, and just to quote one sentence, he states that "it has become apparent that the current regulatory framework may not provide the full set of tools to effectively deal with them"—referring to accidents.

My concern is this: is it even possible to prevent all rail accidents? And a follow-up question would be, is it possible, at the very least, to avoid and prevent fatalities in an absolute way, especially those arising out of derailments; and is there a safety standard, whether an American standard or a Canadian standard or a provincial standard like we have in British Columbia, that can be beefed up enough so that we don't have the ongoing stories of people losing their lives because of derailments?

•(1715)

Mr. Marc Grégoire: I will start, and Luc will complete.

Your first question is whether it is possible to eliminate all accidents. No, it's not possible to do that in any of the modes that we supervise. It's not possible in aviation, on the roads, in the water, or on the rail.

Are there standards, or best practices, if you want? That's done by sharing best practices across different countries. We like to think we have pretty good standards here in Canada. In fact, before 2002 when the accidents started to increase year after year until they peaked in 2005, we had a very good story to tell in rail, but the situation degraded somewhat. Unlike aviation—and that will address also your previous question—and marine, where we have international bodies under the UN—ICAO for aviation and IMO for marine—there are no ways to share best practices on a formal basis.

We have a similar situation on the road, I should add, because for the roads there isn't a similar body either. There is talk about creating one.

Maybe Luc can respond further.

Mr. Luc Bourdon: I'll just add a comment on fatalities. Can we eliminate fatalities? Fatalities are the consequences of accidents. Sometimes you're amazed that someone got out of something with nothing, and at other times you're surprised at how severe the consequences are. The only way to eliminate all fatalities would be basically to try to eliminate all accidents. I was involved, when I worked for the railways, in many investigations of fatalities.

The Chair: We are going to have to wrap up there. I'm sorry. We are squeezed really tight for time right now.

I would thank our guests for attending. If we have any further questions of you, we'll be in touch with you. Thank you very much for attending today.

We have a motion by Mr. Bélanger, and we'll deal with that.

Mr. Don Bell: Will we be able to invite these gentlemen back?

The Chair: I'm sure we can. We'll have to decide when.

If you'll check your order paper for the day, we have a motion on the floor by Mr. Bélanger. I'll turn the floor over to him.

[*Translation*]

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

I believe this motion speaks for itself. When the minister appeared before the committee to speak to the estimates, he indicated that he was thinking about launching a review of Canada Post. I know that it is the right of the executive branch to review the operations of crown corporations, but I believe that the committee also has a say in how the government should do this. It's as simple as that.

There is no mention of a schedule because the minister did not refer to one: he simply said that he was thinking of undertaking a review. The objective of the motion is to give the committee a chance to study and provide recommendations to the terms of reference of any review, should the government decide to go ahead with it.

•(1720)

[*English*]

The Chair: Are there any comments?

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: This is what the motion says:

[...] provide the committee with an opportunity to study and provide recommendations to the terms of reference of any review of Canada Post prior to its commencement.

I would like to clarify certain things. I do not want to hold up the work of the committee, but I would like to hear the minister explain to us the scope of such a review, and I would like us to make recommendations. Is that the objective of the motion, Mr. Bélanger?

Hon. Mauril Bélanger: Yes.

Mr. Mario Laframboise: Your objective is that we make our recommendations to the minister before he commences the review, right?

Hon. Mauril Bélanger: That's right.

Mr. Mario Laframboise: So we will not wait for him to make his recommendations to make ours.

Hon. Mauril Bélanger: Indeed. It may not be very clear in French; I realize that. The idea is that the minister, the department's representatives or representatives from the agency appear before the committee and tell us what they intend to do and how they intend to proceed, so that we can share with them our thoughts and recommendations, if we do make any, before the work begins. We certainly do not want to hold up the process.

[English]

The Chair: Mr. Julian.

[Translation]

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

The French translation is indeed incorrect. It should read " [...] provide the committee an opportunity to study and provide recommendations to the terms of reference of any review of Canada Post prior to its commencement".

I personally support the motion. I assume that the English version is correct. It would make sense to me that we be given an opportunity to provide recommendations to the terms of reference of any review and that we be able to do that in a timely manner.

[English]

The Chair: Mr. Fast.

Mr. Ed Fast: Before we can make an assessment of this motion, we want to know what the French version is going to say. Is that possible? We've had that problem before—the same in English. We've even had Canada Post litigation arising out of it.

Mr. Don Bell: We have translators in the back room. They could read it out to us.

Mr. Ed Fast: Perhaps we could have it read back the way it's going to sound before we vote on this, because I'm concerned.

Is anyone aware of when this has been done before? Have other committees demanded that the minister come to them with the terms of reference before he acts on them?

The Chair: Mr. Volpe.

Hon. Joseph Volpe: I don't want to seem to have the definitive view on this. It is not uncommon for a recommendation to come forward from a committee saying, if you're going to study it, this is what we suggest you look at.

In this instance the committee has expressed concerns on both sides of the table about the definitions—the French translation and the English translation—that led to the issues that received a lot of attention and debate. Without reading Mr. Bélanger's mind, this is one of those cases where everybody agrees that certain protections have to be in place, and that the department and the minister have to move in a direction where all interests are taken into consideration. I think that's what the intention of this is.

There have been occasions where committees have said the same thing. Regardless of whether it was a minority or majority government, they've said they wanted the minister to hear what they have to say.

• (1725)

Hon. Mauril Bélanger: I have a direct response to the question, Mr. Chairman.

The same kind of motion was adopted, you may recall, Mr. Fast, at the heritage committee vis-à-vis a review of the mandate of CBC, and it was supported unanimously. It was a similar kind of thing.

The Chair: Mr. Fast.

Mr. Ed Fast: Be that as it may, Mr. Chair, my concern with this is that, first of all, this has the chance of delaying what the minister's actions will be on this file. And we do have a fairly short timeframe. I believe the motion has a drop-dead date of December 31 of this year.

So if I could finish, my concern is that we have thousands of Canadian jobs hanging in the balance—and I think that's been acknowledged by a number of the members of the opposition here—and I think we share the same concern that those jobs not be lost.

In a spirit of non-partisanship, we agreed on a form of motion, thanks to Mr. Bélanger, Mr. Volpe, and Mr. Bell. You crafted something together with your colleagues here that was acceptable to us.

We don't want this process to become bogged down. The minister has clearly indicated that he's going to do a review of Canada Post, and we want to make sure that whatever portion of that review actually addresses the issue of the remailers and their employees is done on an expedited basis. I don't want to go through the same process as we went through last time around, when we were really up against it and we had to act quickly because otherwise there would have been serious consequences to that industry.

Those are my comments, Mr. Chair.

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: I don't have any difficulty with what Mr. Fast just said. The two are not linked. We have a job to do. We've committed to doing it by the end of December on the one particular issue regarding Canada Post, and that's remailers, and this motion doesn't detract at all from that commitment.

This is vis-à-vis a larger review that the minister indicated he might be thinking of doing. And if the government proceeds with such a large review, it'll likely take much more than a few months. These things have a tendency to take a little longer. And I'm suggesting that if this is adopted, before that larger review, if ever it's done, is started, this committee have a chance to look at the terms of reference that the government might be putting together and offer suggestions and modifications. That's it.

That can be done in one meeting, and it doesn't even require the minister. Apart from the fact that the minister mentioned this, I'm not suggesting that we need to call the minister, even. This is a matter of a simple procedure, of saying, get us as a committee involved in setting your terms of reference; at least get our opinion on the record, and then proceed. That's all that says.

The Chair: Mr. Jean.

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

Indeed, I've heard the issues many people around the table have brought up. I think Mr. Bélanger is asking for something reasonable, but I would suggest it should be done the other way. Indeed, the minister did not say, first of all, that he was going to do a review. He said "a possible review", and that's reflected there, so it's speculation.

But we don't need the authority of the minister or anything else to provide terms of reference that we believe would be appropriate. We could, as a committee—because we are masters of our own destiny—come forward with terms of reference that we think would be appropriate for the minister to at least address in any review, if the review takes place.

But what I'm concerned with, and I think most members around the table are concerned with, is the possibility of a delay as a result of this motion. That's why I would suggest that it could be finessed a little bit.

The first thing is remailers. We already have an action there, and we need to take action there. The next one is rural mail delivery and rural post offices. We have issues that are taking place across the country on that, as we speak. My concern is that if indeed we passed a motion like this, a time delay would take place—and I do believe it would take place as a result of the bureaucracy—to have the minister do particular things with particular parts of that Canada Post file.

My recommendation would be to change the wording so that we would do a review some time before the end of December. We could have one or two meetings and set them aside and provide the minister with what we believe could be the terms of reference that he would deal with. I think that would be a more appropriate way to deal with it, especially because it's a possible review, as you've said. It's not a real review. And that, indeed, might even spur the minister to act on reviewing Canada Post, if he had an idea that this committee would work with him to get the job done.

• (1730)

The Chair: If there are no other comments, I'm wondering, Monsieur Bélanger, if you'd clarify the French for us.

Hon. Mauril Bélanger: Well, what Mr. Julian read seemed to be appropriate.

Monsieur Julian, do you still have that?

[*Translation*]

Mr. Peter Julian: Yes. It would read "provide the committee an opportunity to study and provide recommendations to the terms of reference of any review of Canada Post prior to its commencement".

[*English*]

The Chair: So the French now reflects the English.

Mr. Jean.

Mr. Brian Jean: Very quickly, though, Mr. Chair, it is asking for the committee to have an opportunity to study it prior to the terms of reference being made or prior to any commencement of study, so it does have the possibility of delaying action during the summer, for instance. It does have the possibility of delaying action generally.

Quite frankly, from a committee perspective, wouldn't it make more sense to say, we're involved on the floor, we know what's going on, we're the workers involved in this particular file, we've heard from different representatives and we can hear from more, and this is what we believe the terms of reference should be if you're going to conduct a review? Certainly it would make more sense.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: My first comment was specifically so as to avoid delaying our work. That said, I would ask Mr. Jean to act in good faith. If the minister wants a review of Canada Post, he should discuss the matter with us. We may have some suggestions for him.

You seem to be saying that you are unsure whether there will or will not be a review. I would suggest you enquire and get back to us on the matter. I do not want to delay our study. If the minister is preparing for a review and the officials can tell us what they will be reviewing, we may have some suggestions. I think that is the purpose of it. We could do this as of next week, on the condition that they are prepared to do a review; if not, they won't, it is not a problem for me.

[*English*]

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, there's no desire to slow anything down here. I have no idea whether the government intends to proceed, and I have no difficulty with the government proceeding to a review, if that is its wish. That's the executive authority of government—no problem. All I'm saying, as a parliamentarian on this committee, is if the government intends to proceed, take the occasion to solicit our views on recommendations on how to proceed.

I don't want to do that in the abstract, and I don't want to do it needlessly. I understand that the committee can do so if it wishes, but I'm not proposing that the committee do so needlessly. I would only do so if indeed the government intends to proceed. In that case, take a few days—I'm not talking about months—and solicit our input, our reactions, and our recommendations. We can do that in the summer. Committees can meet in the summer.

The Chair: Mr. Jean.

Mr. Brian Jean: I'm wondering if Mr. Bélanger would take a friendly amendment to strike out the words "prior to its commencement". I say that because I think it would be clear that the minister would have notice of this particular motion if it were to pass by the committee. As well, it is clear that working with this particular committee could only be an advantage for the minister. To put "prior to its commencement" simply limits the situation over the summer and it limits the opportunity the minister has to come to the rescue of remailers, rural mail, and rural post offices. I don't think it's appropriate.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: I repeat, Mr. Chairman, that this is not directed at remailers, or anybody; this flows from the information the minister shared with us, that he is considering a review of Canada Post, writ large. If he is, then as a member of this committee, I would like to have an occasion to make suggestions on how that review might be conducted, before it starts. I mean, what's the point of having the mandate and terms of reference set and then we comment? I think that's a little awkward.

So it's not a friendly amendment.

Again, this is a motion. I presented a very similar motion on the review of the CBC mandate at the heritage committee, and it was approved unanimously at committee and in the House. There's nothing nefarious here; it's a matter of parliamentarians wanting to provide to the government, before it embarks on a review of an important corporation, their own suggestions and perhaps recommendations on what to include, what not to include, and how to proceed. It does not detract from the government's ability to do something separately on remailers or this committee's decision to address that issue before the end of December.

I don't see where the hang-up is here.

• (1735)

The Chair: Go ahead, Mr. Volpe.

Hon. Joseph Volpe: I wonder whether we're just working ourselves into an opposition frame of mind for no reason at all. The minister, when he presents a bill to the House, has the option of sending it directly to committee or of waiting until it goes through second reading. What I see is that this one exercises the same kind of option as you would have with a bill, except that it comes over here first. In that way, when your terms of reference are out there, they're out there. For us, it's to recommend to the minister.... First of all, he doesn't have to conduct a review. Second, he doesn't have to accept our recommendation if he does conduct a review. We just want to establish the fact that we're working together.

As Mr. Bélanger said—and it's his motion, not mine—nobody's interested in limiting the executive power of the minister. If the minister wants to conduct a review, fine. If he doesn't want to conduct a review, it doesn't matter whether this passes unanimously or by majority vote, he's still not going to conduct one.

The Chair: Mr. Jean, you have the last comment.

Mr. Brian Jean: Very quickly, Mr. Chair, we're concerned about the delay. The minister is working very closely with this committee. He's trying his best to work cooperatively. I would suggest that a unanimous motion from this committee would, first of all, with the wording as is, from a legal perspective, encourage a review of Canada Post, for certain. I think Mr. Bélanger is aware of that, or at least I would think so.

Second, I'm concerned about the delay. We have three to four months during the summer, and if something comes up, I would suggest that the minister's work with this committee on a cooperative basis would tie his hands. A friendly amendment, I would suggest, would take that away and still work cooperatively with the minister and this committee. It makes sense.

Mr. Ed Fast: Work with it. It's a friendly amendment.

The Chair: Go ahead, Mr. Bell.

Mr. Don Bell: I just wanted to clarify for Mr. Bélanger. I understood his comments. There's nothing in this motion suggesting that this motion would in any way impact the question of remailers. This is separate. The remailer thing goes ahead; we deal with it as quickly as possible and get that resolved. So to Mr. Fast's question about the number of employees—and he knows I'm supportive of that issue being resolved—this is not dealing with that at all.

The Chair: Mr. Jean.

Mr. Brian Jean: It's not separate. A review of Canada Post, I assume, would deal with section 14, the exclusive privilege of Canada Post, which is on the issue of remailers. So any review would, of course, impact this, and this motion directly impacts remailers.

Mr. Don Bell: That's not my understanding.

Mr. Brian Jean: Does Canada Post's mandate include exclusive jurisdiction? Yes. Does it include the issue of remailers infringing on exclusive jurisdiction? Yes. Two yeses make a yes. It would be included in the new review of Canada Post's mandate.

The Chair: Mr. Bell.

Mr. Don Bell: My understanding of it, though, is that in terms of our comments to the minister on this, the issue we're talking about on the second motion is minus the remailers. The remailer issue can be decided and commented on separately, I believe.

Hon. Mauril Bélanger: That was already expressed by the committee. The will of the committee has already been expressed on that unanimously—no, not unanimously, by majority.

The Chair: Mr. Jean.

Mr. Brian Jean: To make it very clear, Mr. Chair, it says, “provide recommendations to the terms of reference” of exclusive jurisdiction of Canada Post, and that is remailers.

Mr. Don Bell: You could amend it to say—

Hon. Mauril Bélanger: Where do you see “exclusive” in there?

Mr. Brian Jean: I said, “terms of reference of any review of Canada Post”. Exclusive jurisdiction is section 14 of the act, which deals with exclusive jurisdiction and is in straight conflict with the remailers.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, I think I've tried to demonstrate around this table a great willingness to cooperate, and so forth. The intent of this motion is very simple. If the minister is going to proceed with a review of Canada Post and therefore set some terms of reference and a method by which he'll proceed with that review, I'm proposing that this committee have a chance for input into that process—input. The minister may decide to discard it or accept it or discard some or accept some. But in no way, in absolutely no way, does this prohibit or impede the committee's ability to live up to the motion it approved two weeks ago vis-à-vis the remailers. To link the two is disingenuous. They're not linked.

• (1740)

The Chair: Seeing that there's no further comment, I'll call the question on Mr. Bélanger's motion, with the English wording being translated to French to correctly reflect the motion itself.

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

The Chair: Rather than delay anyone here, I've passed out a draft letter of what we might send to Air Canada. I would ask you to review it and comment back to me on Wednesday.

Mr. Julian.

Mr. Peter Julian: I think the letter should go as soon as possible. I suggest we add the question of job losses in heavy aviation maintenance.

The Chair: I think we had that debate on a motion. I tried to reflect the committee's feelings as well as I could in those comments.

Mr. Ed Fast: As long as job losses, layoffs, contracting out are not—

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, will you entertain a motion to accept the letter as proposed?

The Chair: I'll entertain that motion.

(Motion agreed to)

The Chair: The letter will go out ASAP.

On Wednesday we will be spending the first two hours of committee dealing with Bill C-6. We'll deal with the estimates in the third hour, as agreed upon at the last meeting.

Thank you.

The meeting is adjourned.

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