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Chair

Mr. Mervin Tweed

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Monday, June 4, 2007

• (1535)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Order. Good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 55. The orders of the day are pursuant to the order of reference of Tuesday, November 7, 2006, Bill C-6, An Act to amend the Aeronautics Act and to make consequential amendments to other acts.

Joining us today from the Department of Transport are Franz Reinhardt, Susan Stanfield, and Merlin Preuss; and from the Department of National Defence, Jacques Laplante and Alex Weatherston.

Welcome.

(On clause 12)

The Chair: When we wrapped up the last committee meeting, we were dealing with amendment G-2, moved by the government. I think we were making headway. Is there perhaps another resolve out there, or are we going to continue to debate this?

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): We do have another handout for the committee that probably will resolve this, just based on all the discussions we had at the previous meeting.

I would ask the clerk to hand that out.

The Chair: We're on page 29 in your program. This is government amendment G-2.

Mr. Jean, do you want to briefly outline what this document does?

Mr. Brian Jean: Actually, it's a reflection of what the other committee members mentioned, a low-risk representative. The changes are set out as far as what we discussed last time.

The Chair: Is it in the form of an amendment or a subamendment?

Mr. Brian Jean: Well, it actually is a subamendment. I think it would have to be, in this case.

The Chair: Perhaps I can get you to read it.

Mr. Brian Jean: Certainly, Mr. Chair, I'd be happy to read it, as follows:

(a) an aeronautical safety study has been carried out in respect of the organization and the results of the study show, in that Minister's opinion, that the organization's particular activities in respect of which it would be able to exercise the powers, duties and functions to be set out in the certificate of designation referred to in

subsection (1.1) represent a low level of risk in relation to aviation safety and security;

That was in relation to the comment that we should mention the low risk level instead of the high risk level.

The Chair: Any comments?

So we're changing the terminology to "low level of risk", correct?

Mr. Brian Jean: Yes. In fact it's underlined and in bold.

The Chair: Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): I think, Mr. Chair, the issue is why this wouldn't be worded as the "lowest" level of risk.

The Chair: Mr. Jean.

Mr. Brian Jean: To my understanding, and I'd like to hear from the department, they indeed have an indicator in place now that allocates the risk, and of course there are risk assessment procedures in place. I would think the drafters of this particular clause addressed it to the design of the program itself that allocates the risk assessment.

Am I correct on that?

Mr. Franz Reinhardt (Director, Regulatory Services, Civil Aviation, Department of Transport): Yes. There's always a certain level of risk in any operation. Of course, if you didn't want to have any risk, you would ground all the airplanes and nobody would be flying.

In the case of the designated organization, if we conduct a safety study and we determine there's a low level of risk following a risk assessment and analysis, that should be considered sufficient to allow the minister to designate—with, of course, many of the other criteria that you will see later on.

Mr. Brian Jean: If I may, Mr. Chair, it certainly answers some of the Bloc's concerns. I think the department is correct; the only way to remove all risk is to ground all aircraft and stop flying. I think the reality is that the stake's at the lowest common denominator, and it matches up with their risk assessment procedure. It seems to make sense. And it certainly is a long way removed from where it was before.

The Chair: Further comment?

Mr. Brian Jean: Also, I would like to hear from the department, if possible, Mr. Chair, in relation to (b). If you look further on down the page, "air transportation of fare-paying passengers", I don't really understand the rationale there.

Mr. Franz Reinhardt: Following the discussion we had at the last committee meeting, we removed the qualifier “scheduled”, and in French “régulier”.

So if you go to the actual section, the previous one was “the organization's activities do not include the scheduled air transportation of fare-paying passengers”, and now it would read, “the organization's activities do not include the air transportation of fare-paying passengers”. So it removes the qualifier “scheduled”.

Mr. Brian Jean: Excellent.

I don't know, Mr. Chair, if you want me to talk about the rationale that the Bloc also used in the three-year coming into force section, which is obviously another section, but it's encompassed within the same, and the government is in favour of that amendment as well.

The Chair: Are you suggesting that the coming into force is going to be in clause 49, though—

Mr. Brian Jean: Subclause (2). Yes, I wanted to give confirmation to the Bloc that we did listen to their suggestion on that and are, quite frankly, in favour of it. We think it's good.

The Chair: Further comment?

Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): I wanted to clarify in terms of the removal of paragraph (b), that's what we talked about. Some large carriers are non-scheduled, but that allows particularly the smaller carriers who don't have scheduled flights, is that correct?

The Chair: Just for clarification, I don't think we're removing paragraph (b)—

• (1540)

Mr. Don Bell: No, we're removing the word “scheduled” in paragraph (b).

The Chair: We're removing the word “scheduled”. Okay.

Mr. Franz Reinhardt: So that means all the carriers that are not usually scheduled, such as the small air taxis that are transporting fare-paying people, cannot be designated.

Mr. Don Bell: And that would be chartered as well.

Mr. Franz Reinhardt: That's correct.

Mr. Don Bell: Yes, okay.

Mr. Franz Reinhardt: So it's a big difference from what...

Mr. Don Bell: Yes.

Mr. Brian Jean: I was just going to say that I think Mr. Bélanger or Mr. Volpe were concerned with that, and I think the department's addressed that as well.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): I'm just getting caught up here, Mr. Chairman. I was a few minutes late, I apologize.

The Chair: Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Mr. Reinhardt, what do you really want to make them do? Please give me some specific examples.

Mr. Franz Reinhardt: I can give more concrete examples than those we talked about during our discussion on ultra-light airplanes. I spoke about this briefly last week, I believe. There are companies out

west, in the Prairies, that regularly spray farmers' fields during the seeding period. These are specialized, commercial pilots who are knowledgeable about that kind of operation. Their associations have a very broad expertise in that area.

Under those circumstances, we think it would probably make more sense to let those people monitor their operations, even though the minister can intervene at any moment. That way, we could make more efficient use of our inspectors, for example, by carrying out more inspections at major 705 airlines, such as WestJet and Air Canada.

Mr. Mario Laframboise: But will the inspectors still be able to make on-site visits at those companies?

Mr. Franz Reinhardt: Of course.

Mr. Mario Laframboise: You will carry out inspections.

Mr. Franz Reinhardt: The minister will still be able to intervene. At present, he is responsible for monitoring safety issues within the Canadian Business Aviation Association. As I told you, aside from SMS regulations, basic regulations dealing with licensing, certification aircraft, maintenance and air worthiness still apply. The associations and their members must respect those requirements. The minister can enforce the law at any time.

Mr. Mario Laframboise: I am concerned when you say that inspectors could do other things. We are including provisions so as to maintain an inspection system throughout all airline services. Will you be able to carry out spot checks?

Mr. Franz Reinhardt: Yes.

Mr. Mario Laframboise: Will you still be able to keep an eye on the industry, even though an additional level has been added, i.e., that an association will be responsible for increasing security with all its members?

Mr. Franz Reinhardt: Yes, indeed.

Mr. Mario Laframboise: I can go along with your recommendations. My only problem is that—and this is why I insisted on the three years—I do not want you to set that aside. Earlier, your first reaction was to say that your inspectors will do other things.

Mr. Franz Reinhardt: No.

Mr. Mario Laframboise: I want your inspectors to continue to carry out monitoring work, in addition to having the appropriate association of operations conducting some additional security work with its members. I have no qualms with that.

Mr. Franz Reinhardt: Besides, as you know, there is also the issue of risk indicators, that is to say that we will conduct studies to determine risk levels. That is a key component.

With regard to investigations, inspections and the like, as you know, we still have to carry out risk management. When risks are lower, there is no need to have as many people as often, although they can intervene all the same. I will be very honest with you: this has always been the case in the past, even before implementation of safety management systems. This all revolves around risk indicators. We have to find out where we get the best return on our investment.

Mr. Mario Laframboise: With regard to the inspections or whatever else you carry out.

Mr. Franz Reinhardt: That's right.

Mr. Mario Laframboise: You will carry out either more or fewer inspections, depending on the level of risk.

Mr. Franz Reinhardt: Yes, that is normal procedure.

In addition, some operations are so fine-tuned and their people are such experts that it is easier for us to provide them with some extra monitoring. We are always ready to intervene.

Furthermore, amendments have been moved to strengthen the powers—I should say that the powers have always been there—in terms of perception, to make it clear that despite designated organization status, the minister is still responsible for approving regulations and standards. You will see, as we come to those amendments later on. This was done to strengthen that provision.

Now, I know that we were talking about an implementation in three years' time, but since it will take between two and three years to craft the regulations, we would have liked it to occur sooner. Moreover, if the members of associations such as the Canadian Business Aviation Association were designated, that would allow them to appear before a tribunal. At present, they do not have any recourse. Therefore, if ever the association refused to recognize them for whatever reason, they would have no recourse.

Mr. Mario Laframboise: Except that these are the same people who told us that the inspectors are doing other things. That is what concerns me. I was coming to that. You have been working for a long time with the members of that association, carriers and private jet owners. Those people came to tell us that the inspectors were doing other things. They said that we would see, that they would deal with security. But there are more and more private jet owners.

Mr. Franz Reinhardt: Yes.

• (1545)

Mr. Mario Laframboise: I also like that you struck the word "scheduled" before the words "air transportation," because those people do carry passengers.

Mr. Franz Reinhardt: We removed the word.

Mr. Mario Laframboise: Clearly, they will pay to carry passengers, but we are concerned because we do not want there to be a back-door market without any oversight.

Mr. Franz Reinhardt: The word has been removed, Mr. Laframboise.

Mr. Mario Laframboise: I understand that, but your friends seem to be forcing your hand somewhat.

What we want is—

Mr. Franz Reinhardt: Canada is the only country in the world that requires that an association monitor those people. Elsewhere, there are no regulations except for the basic ones.

Mr. Mario Laframboise: But other countries surely have inspectors to check whether those people comply—

Mr. Franz Reinhardt: No.

Mr. Mario Laframboise: Really?

Mr. Franz Reinhardt: No.

Elsewhere, Mr. Laframboise, things are just like for private aviation. For example, if I own a private plane, if I have my own plane, inspectors can no doubt come inspect it from time to time, just like in any other sector, but in other countries, including the United States, small business jets are not as regulated as they are here in Canada.

Mr. Mario Laframboise: That must be why people were able to attend jet pilot courses and then fly into the World Trade Center Towers. That is why I am concerned by these things. Do you understand?

Mr. Franz Reinhardt: That is a whole different issue.

Mr. Mario Laframboise: What I mean to say is that that is how those people are trained to become private jet pilots. That is the situation and that is why I would prefer that you and your inspectors continue to monitor those people. I want to make myself clear: the service should be maintained. That is also why we want the coming into effect in three years. You should perhaps be pleased by the three-year period: that will give you the time needed to make the association understand that this is serious business. This is not only about their having to contend with fewer inspectors. They will continue to deal with them, but in the meantime we will regulate them and ensure that the organization operates in accordance with Canadian laws. Perhaps with stronger legislation, all pilots will be duly accredited.

Between you and me, what do you make of all this?

Mr. Franz Reinhardt: Mr. Laframboise, I think that pilot training is another matter. I do not think that this has anything to do with it.

Mr. Mario Laframboise: Nevertheless, they have to practice and receive training somewhere. To do this, they often use private jets. Do you know anyone who owns a private jet?

Mr. Franz Reinhardt: Yes.

Mr. Mario Laframboise: An investigation can take up to two years to find out who owns a jet. You have to deal with general partnerships that have several owners.

Mr. Franz Reinhardt: However, Transport Canada has a good registration system for aircraft owners. But, as a matter of fact, there are company names—

Mr. Mario Laframboise: —that are more complicated than others. This is why I am a bit worried about this issue and I really want to make sure that we can trace those people.

The Chair: Mr. Bélanger.

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

Regarding the definition, I like the idea of changing "high risk" to "low risk" and regarding the idea of removing the word "scheduled" from the English version, which corresponds to the word *régulier* in the French version, I would like to understand the impact. Does it actually exclude all chartered flights?

Mr. Franz Reinhardt: Yes, it does say: "(b) the organization's activities do not include the scheduled air transportation of fare-paying passengers;"

• (1550)

Hon. Mauril Bélanger: All right, but it still includes flights with fare-paying passengers, no matter what size. Am I right?

Mr. Franz Reinhardt: Yes, indeed. In the previous version, the term "scheduled" did not adequately include fare-paying passengers. Removing this term greatly extends the coverage. It covers anyone who purchases a ticket.

Hon. Mauril Bélanger: In fact, it effectively excludes chartered flight operators. They cannot be designated.

Mr. Franz Reinhardt: Precisely.

Hon. Mauril Bélanger: In my opinion, this is a good step forward.

Does the government intend to propose amendments to subsection 5.31(3)?

[English]

The Chair: To proposed subsection 5.31(3).

Hon. Mauril Bélanger: That is:

(3) A designated organization has all the powers necessary to monitor compliance with the standards and rules that it establishes.

Is there any intention of modifying that at all?

The Chair: Mr. Reinhardt.

[Translation]

Mr. Franz Reinhardt: Further on, you will see other amendments that modify this provision.

Hon. Mauril Bélanger: Must we adopt this first?

Mr. Franz Reinhardt: In the pile of amendments that you received, on page 3, there is an amendment to a new provision, namely subsection (7).

Hon. Mauril Bélanger: Do you mean inspection?

Mr. Franz Reinhardt: Yes. This will give you the result that you wanted from number (3).

Hon. Mauril Bélanger: That is also very good.

In amendment G-2, subsection 5.31(c), it says "any condition prescribed by regulation."

Mr. Franz Reinhardt: It does not affect that.

Hon. Mauril Bélanger: Should we say "(c) any condition prescribed by regulation that does not violate the current legislation"? I am not sure whether it is necessary; I am only asking for some advice. In other words, we could not rescind the prohibitions or restrictions imposed by the act through regulations.

Mr. Franz Reinhardt: Mr. Bélanger, what you are looking for is in subsection (8), which, I think, is on the next page.

[English]

The Chair: Is this the handout?

[Translation]

Hon. Mauril Bélanger: Is it on page 4 of the document?

[English]

The Chair: That's new proposed subsection 5.31(7) and—

[Translation]

Mr. Franz Reinhardt: It is on the last page.

Hon. Mauril Bélanger: Indeed, we have made great progress!

Thank you, Mr. Chairman, I am satisfied.

[English]

The Chair: Is everybody comfortable? Okay.

To clarify, there has been a subamendment to the government's amendment. It will change paragraph (a) to a low level of risk, and the second part, in paragraph (b), will remove the word "scheduled".

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

The Chair: Mr. Julian.

Mr. Peter Julian: There is a series of subamendments. You're talking about subamendment (a).

The Chair: I actually brought them both together as two subamendments in one phrase. They're going to change it to "a low level of risk" and then we're going to remove "scheduled". That's the subamendment to the government amendment G-2.

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

The Chair: We will go to amendment BQ-14, which is page 37 in your playbook.

• (1555)

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Did we do something with the others already?

The Chair: Yes, they're covered by the amendments we've made here.

Amendment G-2 basically eliminates amendment BQ-12, LIB-5, NDP-6, BQ-13, NDP-7, and NDP-7.1.

Hon. Joseph Volpe: Okay.

Hon. Mauril Bélanger: Give those slowly, so we can scratch them off here.

The Chair: Yes, for sure. So BQ-12 is dealt with in the amendments to G-2. So are BQ-13, LIB-5, NDP-6, NDP-7, and NDP-7.1.

That moves us to BQ-14 on page 37, and just for the interest of the committee, amendments BQ-14 and NDP-8 are identical.

Mr. Julian.

Mr. Peter Julian: Mr. Chair, I would agree with you on all of the amendments with the exception of NDP-7.1. Amendment NDP-7.1 adds some additional clarity around the conditions under which a designated organization can be so designated.

The Chair: I'm advised that NDP-7.1 is in a line conflict, that with the amendment and subamendment to G-2, that line is no longer there.

Hon. Mauril Bélanger: It's no longer there, Mr. Chairman, because some lines have been shifted around—

The Chair: Right.

Hon. Mauril Bélanger: —so the task is to find where it would apply and see whether you're right or Mr. Julian's right in terms of its non-pertinence anymore.

The Chair: Mr. Jean.

Mr. Brian Jean: I'm wondering whether or not Mr. Julian wants to deal with it now or maybe on Wednesday. But I would certainly be interested in looking at the amendment coming into a place where it would belong without being in conflict—depending on what it is, of course, subject to looking at it.

But I'm more curious as to what he's trying to accomplish with that amendment given the new amendment. Through you, Mr. Chair, would Mr. Julian like to look at it and present it for next Wednesday as maybe an amendment under a different clause or to the amendment we just passed, just because it's—

Mr. Peter Julian: Certainly.

The Chair: The amendment suggests that it's replacing line 30—

Mr. Brian Jean: Yes.

The Chair: —and that no longer exists. That's the only reason it's in conflict. There's no line for it to change anymore.

Mr. Peter Julian: I understand, Mr. Chair, but Mr. Bélanger pointed out that although we have adopted some shifting in wording, the substance of the amendment is still valid.

But I'll follow Mr. Jean's advice: either we can formally stand it aside or, if you prefer, Mr. Chair, we can simply come back to it on Wednesday.

Mr. Brian Jean: From the government's perspective, Mr. Chair, and in the spirit of cooperation, we want the best bill to come forward, and certainly on a technical argument, we don't think we should have something ignored on that basis. I would invite the member to bring it back Wednesday if it's not satisfied by the current amendment.

The Chair: We'll stand NDP-7.1 until Wednesday for clarification as to where it would apply in the act.

Hon. Mauril Bélanger: Will it be Wednesday or earlier, in case we get finished today?

The Chair: Absolutely.

The Chair: Next is BQ-14 on page 37.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, the amendment reads as follows:

(1.1) The Minister of Transport shall cause to be laid before each House of Parliament, not later than March 31 in each year or, if that House is not then sitting, on any of the first 30 days next thereafter that the House is sitting, a list of the organizations designated under subsection (1).

We simply want to make sure that the list of organizations is known and published. In this way, the designated organizations will not remain hidden from Transport Canada, and will be known to the public.

[*English*]

The Chair: Mr. Julian.

• (1600)

[*Translation*]

Mr. Peter Julian: I support the amendment by the Bloc Québécois. It is important to ensure public transparency. This amendment effectively does that.

[*English*]

The Chair: Mr. Jean.

Mr. Brian Jean: That's a great idea.

(Amendment agreed to)

The Chair: That was the same amendment as NDP-8, so that now slides off the table.

We will move to NDP-8.1 on page 39.

Mr. Julian.

Mr. Peter Julian: This is similar to the amendment we set aside last week. I don't know at this point whether we have a report coming forward that will deal with the issue of the override of the Canada Labour Code, the Transportation of Dangerous Goods Act, and the Canadian Transportation Accident Investigation and Safety Board Act.

It seems to me that the issues of those two amendments are parallel and should be discussed at the same time. I suggest we set that aside until we've had the discussion on the previous amendment.

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: I don't believe that's necessary, because we've yet to decide on the other one, whether or not we'll mention it. But once it's mentioned it will apply throughout the bill, so I don't believe that repeating it at various more strategic locations will be necessary. We'll have that debate. I don't think we need to add it here.

The Chair: Mr. Jean.

Mr. Brian Jean: I agree. We don't have any problem with it going, but I think it's redundant. If it's going to apply to the other clause it's going to apply to all. We'll have that discussion. I think it can fall by the wayside, but it doesn't make any difference. If Mr. Julian is pressed with that particular motion, let's move them together because they're going to deal with the same thing anyway.

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Bélanger and Mr. Jean are right. If we adopt the Bloc amendment that was put forth earlier in the clause-by-clause discussion and, for whatever reason, it isn't adopted, it will be absolutely pertinent and relevant to discuss this amendment. So I suggest we set it aside until we've had the initial discussion. Then if it is adopted I won't need to bring it forward.

(Amendment allowed to stand)

The Chair: Next is BQ-15 on page 40.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: I move that Bill C-6, in clause 12, be amended by adding after line 9 in French, which is line 11 in English, on page 14, the following:

REVIEW

5.381(1) On the expiration of three years after the coming into force of this act, section 5.31 to 5.38 shall be referred to the committee of each House of Parliament that normally considers matters relating to air transport.

(2) Each committee referred to in subsection (1) shall, as soon as practicable, undertake a comprehensive review of sections 5.31 to 5.38 and their operation and shall, within six months after the review is undertaken, submit a report to Parliament thereon, including such recommendations pertaining to the continuation of those sections and changes required therein as the committee may wish to make.

This means that every three years, sections 5.31 to 5.38 will have to be analyzed by the committees in charge of enforcement. This means that given the fact that the first part becomes effective three years after the effective date of the act, that is, in six years, which is three years after the effective date of these sections, they would be reviewed or analyzed again. Mr. Reinhardt, this aims at answering the questions that I just put to you. We must make sure that no designated organizations can be exempted from inspection.

I am not presuming anything. I just want to make sure that we do not entrust organizations that... This is not Transport Canada. I want you to understand this clearly. In our opinion, you are in charge of public safety. If we bring in an intermediary, although your objective is good inasmuch as it seeks to ensure a higher level of safety and to make those people accountable, perhaps the clients on the ground do not see it in the same way. People using these services or some members could have questions for the committee, as they might think that the designated organization is not working as intended. Therefore, we want to make sure that this is reviewed every three years. If everything is in order, the review will not take much time. If not, it will be more complicated.

That is the objective of this amendment.

• (1605)

[English]

The Chair: Mr. Jean.

Mr. Brian Jean: I'm looking at G-6 on page 69.1, which may be a bit of a compromise on that. This would be a better one. It doesn't have specific time periods and it doesn't do some of the things that have been suggested, but it does allow for the Standing Committee on Transport.... It needs to have a friendly amendment to include the Senate, because it's not included in there.

The Chair: Mr. Bell.

Mr. Don Bell: Doesn't amendment BQ-15, in proposed subsection 5.381(1), make reference to "of each House?"

The Chair: It does, but G-6 does not.

Mr. Don Bell: That's what I mean. So the BQ one seems to cover a timeframe and both Houses, does it not?

Mr. Brian Jean: Yes, but remember that the act will not have any effect until three years after it comes into force, under subclause 49 (2). But amendment G-6 allows for review on just about any basis. For instance, if a matter comes forward from Judge Moshansky that is of some urgency, there is a provision there to study it immediately and report back to the House on it.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, the thrust of G-6 on page 69.1 is not quite the same as BQ-15. I had some concerns and misgivings with that particular amendment, G-6, in that it could be seen as substituting the committee, in a way, for safety organizations or putting it in conflict with safety organizations. I'd be very careful there. There's nothing in here that is new in terms of committee authority. The committee has the authority to do what this says, but I'm a little concerned with the way it's formulated. But we can get back to that. It's not the same.

I think the other one is more specific, that three years after coming into force of this section, the committee will be asked to.... Whether they do it or not is up to them. So I'd stick to BQ-15 in terms of the intent. It is clearer and a little crisper, and this one could lead to some confusion.

The Chair: Further comment?

Mr. Brian Jean: I'd like to hear from the department, if possible, very briefly.

The Chair: Mr. Reinhardt.

Mr. Franz Reinhardt: The way it reads in BQ-15 is "On the expiration of three years after the coming into force of this Act", so that means in three years, at which point the designated organizations will not have even started to be authorized. That would not make sense. It would need to be amended to reflect the new situation, because otherwise it's going to be six years, you see.

The Chair: Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: It could also say "from the effective date of the present article of the act". This would mean that the first review would take place after six years.

• (1610)

[English]

The Chair: Mr. Volpe.

Hon. Joseph Volpe: I believe this issue has been raised as well in another bill that has passed through the House, is before the Senate, and might come back. It's all a question of timing of when the bill actually comes into force as opposed to when it is proclaimed, which I think is what the substance of the disagreement might be.

So I look to Ms. Stanfield for a little bit of clarification. This committee has talked about the actual implementation of everything within about three years. We discussed that last week and we have a coming into force clause that's supposed to capture all the timeframes between now and when all the designated organizations will be able to get the ball rolling.

I'm wondering whether, from your perspective, legally and procedurally, the understanding that everybody should have by proposed subsection 5.38(1) is three years after the coming into force of the implemented act, or whether we're just talking about the proclamation of the act. The proclamation of the act will take place, as I understand procedures, once it has passed the other House and come back and everybody says, hey, this is kosher, let's go.

So if the intent of both the government and the other amendment by the Bloc is that it comes into play after things have been systemized, then I don't see any disharmony in the two. I would ask Mr. Laframboise to identify that.

Ms. Stanfield, what do you understand by these two?

Mrs. Susan Stanfield (Legal Counsel, Department of Transport): Clause 49 is a coming into force clause, and as it's drafted right now, it states that the provisions of the act come into force on a day or days to be fixed by order of the Governor in Council.

So what that means is that this bill, even once it receives royal assent, will not be in force until there's an order in council stating that provisions come into force. That leaves you a lot of flexibility in terms of how you want to implement it. You can have it come into force almost immediately after royal assent, which was done with a previous amendment to the Aeronautics Act a few years ago, or you can stagger provisions. So you could have most of the act come in on one day on an order in council, and then stagger the coming into force for three years after those provisions come into force, or three years after royal assent, because you could time against royal assent or coming into force of provisions. Three years after royal assent, your provisions dealing with designated organizations would take effect.

It is my understanding that the desire is that three years after the implementation of the designated organization provisions, you would want to have a review. So that would be six years after royal assent, say, assuming that this—

Hon. Joseph Volpe: Assuming that's the case, it could be seven or it could be....

Mrs. Susan Stanfield: That's how I read this.

Hon. Joseph Volpe: To all intents and purposes, then, there's really not much difference between G-6 and BQ-15. There isn't a difference in what's trying to be accomplished.

Mr. Brian Jean: The position of the government would be that if it is the will of one of the parties to bring forward this particular amendment, then let's deal with it. Certainly it seems to be the case. We can deal with G-6 later on.

[Translation]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: With regard to Mr. Volpe's question, honestly, the three years came up after this amendment was tabled.

We want this to take place three years after the effective date of this part of the act. If everyone agrees with this, let us amend the text so that it states that it will take three years after the effective date of the said section.

•(1615)

Mr. Franz Reinhardt: Section 12.

Mr. Mario Laframboise: The entire section 12?

Mr. Franz Reinhardt: No, not only section 12, there is more to it.

Mr. Mario Laframboise: Yes, there is more to it.

[English]

Mr. Franz Reinhardt: The wording, Susan, would be...?

Mrs. Susan Stanfield: It would be “three years after the coming into force of sections 5.31 to 5.38”.

Mr. Franz Reinhardt: Yes.

[Translation]

Mr. Mario Laframboise: That is it.

[English]

Hon. Joseph Volpe: I wonder whether Monsieur Laframboise and Mr. Jean would be happy to marry the two. Taking a look at BQ-15—if you'll indulge me for a moment—where it says in new proposed subsection 5.381(1), “On the expiration of three years after the coming into force of”, instead of saying “this Act”, simply say “sections 5.31 to 5.38”.

[Translation]

Mr. Mario Laframboise: Except that—

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: It would not be a bad idea to have two whole sections, because section 29 has more to do with specific complaints, which means that there is a specific complaint regarding...

I hope that we will keep amendment G-6 because it deals with complaints that anyone could file, and ask the committee to deal with the issue, whereas we want, additionally, that the industry knows that the committee will do a review. We want designated organizations to get the message that in fact, every three years, they will undergo a review. This will oblige them to interpret the legislation more strictly. Moreover, if an extraordinary complaint should come up, the committee could deal with the issue pursuant to what you propose in amendment G-6, on page 69.1 of the amendments.

[English]

The Chair: Mr. Volpe.

Hon. Joseph Volpe: I don't disagree with what Mr. Laframboise is trying to say, which is why I made the suggestion. In any event, it's not going to happen until those clauses of the bill have been put in place. By making it specific to that particular proposed section, we would comply with what Ms. Stanfield has told us, which is that you can stagger the implementation of the clauses of this bill. When the clause we are dealing with is implemented, that would be the beginning of the ticking of the clock, so to speak. That would be captured by that statement, just for greater certainty.

But in terms of when there are difficulties associated with the act, as I read this particular clause, those provisions are there for people to make the complaint they might make...and under the circumstances, this committee would feel comfortable with.

I've made the suggestion, Monsieur Laframboise, and I would like it to be a friendly amendment. I don't know whether the clerk or the researchers took note of the exact wording, but we might well make some progress right now by having a decision on that.

The Chair: Is there any further comment?

Mr. Julian.

[*Translation*]

Mr. Peter Julian: I agree with Mr. Laframboise. We are dealing with two completely different aspects. Clearly, it is important to have a structure for dealing with complaints. Amendment G-6 effectively fulfils this requirement. I support amendment BQ-15, but it does not have a mechanism that would oblige the government of the day... In three years, the government could be Conservative, or it could be Liberal or NDP. We never know. Therefore, the government will have to follow the committee's recommendations. We know very well that some recommendations that we make are not necessarily accepted.

If we look at NDP-8.2, we can see that the only difference is that the said section will be repealed, unless the committee recommends that it be maintained. I think that this mechanism is useful to force the government, no matter which party is in power at the time, to follow the transport committee's recommendations. This is the missing element. We can make reports or recommendations, but there is no mechanism to make sure that these recommendations are followed.

• (1620)

[*English*]

The Chair: Mr. Volpe has suggested a friendly amendment, Monsieur Laframboise. Where it says "coming into force of this Act", he would eliminate "this Act" and just refer to it as "sections 5.31 to 5.38".

I would ask Monsieur Laframboise if he would accept that as a friendly—

Hon. Mauril Bélanger: Continue reading.

The Chair: Do you want me to continue reading?

It would read: "On the expiration of three years after the coming into force, sections 5.31 to 5.38 shall be referred to the committee of each House of Parliament that normally considers matters relating to air transport".

Mr. Mario Laframboise: That's okay.

Hon. Joseph Volpe: *En français.*

The Chair: I can't do the French, I'm sorry.

[*Translation*]

Mr. Mario Laframboise: In French, it would read: "à l'expiration d'un délai de trois ans à compter de leur entrée en vigueur, les articles 5.31 sont déferés".

Mr. Franz Reinhardt: I think that we also need a small amendment in English to make the text more readable. We should do the same in English.

[*English*]

It's the same in English. I think it should say that "On the expiration of three years after the coming into force of this Act, sections 5.31 to 5.38...".

The Chair: The suggestion was to eliminate "this Act", because we're talking specifically about those sections of the act, if I'm correct.

Mr. Franz Reinhardt: Then it should be "they shall be referred"; it's the sections that shall be referred.

[*Translation*]

Hon. Mauril Bélanger: Mr. Chairman,

[*English*]

If you take the French as the lead here, the English would have to read: "On the expiration of three years after their coming into force, sections 5.31 to 5.38 shall be referred to...". Then they'll be both be the same, *anglais et français*, and we won't have any confusion.

The Chair: Is everyone comfortable with that?

Shall the subamendment carry?

Hon. Joseph Volpe: That's been changed.

Hon. Mauril Bélanger: What's changed? Oh, yours. Okay.

The Chair: It's a friendly amendment. So I think I'll just ask then, shall the amendment carry as changed?

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

The Chair: This brings us to amendment NDP-8.2, page 41. It's pretty much redundant, I would say.

Mr. Julian, do you have a comment?

Mr. Peter Julian: The only component is that in a sense it would have to be reworded, given the amendment we've just adopted. It would add a new section. This section would be deemed revoked unless the committee recommends continuation.

The Chair: I'm advised that it has been dealt with in amendment BQ-15.

Mr. Peter Julian: I won't protest, Mr. Chair.

The Chair: We're going to amendment LIB-6, on page 42.

Monsieur Bélanger.

Hon. Mauril Bélanger: Given everything else that's been amended and brought forward and that is coming—that's the key there, that is coming—and given these two initiated by the government, I'd be prepared to withdraw amendment LIB-6.

The Chair: Thank you. Amendment LIB-6 is withdrawn, to the excitement of the committee.

Mr. Jean, it's not necessarily procedure, but I noticed that in the document you handed out you were proposing a new subsection 5.31 (7) on inspection.

•(1625)

Mr. Brian Jean: It would be an appropriate time to deal with it, given—

The Chair: Is it the will of the committee to do that? Okay.

Mr. Jean.

Mr. Brian Jean: We did talk at length about this at the last meeting. The new amendment would be as follows:

The Minister of Transport shall maintain a program for the oversight and surveillance of the aeronautical activities of holders of certificates of designation issued pursuant to subsection (1.1).

The Chair: Okay. So this is a new proposed subsection 5.31(7) on inspection.

Is there any comment? Mr. Volpe.

Hon. Joseph Volpe: This is an observation more than a comment, Mr. Chairman.

I believe that when this was raised last week for the parliamentary secretary to consider, there were other clauses in discussion that would be covered by this amendment, were it to come. It has come, so I'm wondering whether we are going to have to have a debate on those other amendments that we've deferred as a result of this.

The Chair: Mr. Jean.

Mr. Brian Jean: I would point out for the members that indeed I understand what Mr. Volpe is saying, but my understanding is that this is more of a collaboration of all of the debate issues and the finality of where the members laid themselves on afterwards. But for certain, if the clerk wants to bring them forward....

You know, this is a compromise of all the comments, to be blunt.

Hon. Joseph Volpe: I just wanted to draw that to the attention of all committee members, and for you in particular, Mr. Chairman, because I have no interest in repeating the debate of last week on related amendments.

An hon. member: Hear, hear!

The Chair: Thank you, Mr. Volpe.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I want to understand this. Would the government replace its amendment G-2.1 with the new text that was tabled today? Would you replace amendment G-2.1 with the text that you tabled today? No?

[*English*]

Mr. Brian Jean: No.

[*Translation*]

Mr. Mario Laframboise: When will we come back to this text?

[*English*]

The Chair: Mr. Reinhardt, do you want to respond?

Mr. Franz Reinhardt: My understanding is that amendment G-2.1 is still on the table, and that this was in addition to amendment G-2.1. Amendment G-2.1 is very general. This one was specific to designated organizations.

[*Translation*]

Mr. Mario Laframboise: All right.

[*English*]

The Chair: The question I would have, then, of the government is this. We have a new proposal on inspection. Where does it fit into the bill?

Mr. Mario Laframboise: You have to come back.

The Chair: We're at proposed subsection 5.31(7), the new one, and yet we're referring to amendment G-2.1, which concerns 5.3901.

And while we're at it, on the next page it says, "Approval of Minister of Transport of standards". I want to know where that fits in too.

Mr. Franz Reinhardt: I believe I can explain it. If you go to amendment G-2.1, it says:

5.3901 The Minister of Transport shall conduct

—actually, we were told by Justice that it should be "carry out" to keep consistency—

shall carry out inspections of the aeronautical activities of holders of Canadian aviation documents who are required to have a management system.

This is to ensure that when there is an SMS, the minister is still carrying out inspections. This is very general, very generic for SMS organizations. The one we just discussed, proposed subsection 5.31(7), is for designated organizations specifically.

The Chair: And again, just for the sake of order as to how it comes in, we have amendment G-2.1 on page 42.1, but we are dealing with all the amendments in the area of proposed section 5.31.

Hon. Mauril Bélanger: Mr. Chairman, it would be logical to be dealing right now with the proposed new proposed subsection 5.31(7) on inspection. That's where we are in the bill right now.

The Chair: Okay, but then I have a second page with an A and a B, talking about the "Approval of Minister of Transport of standards & rules established by a designated organization". Is that to follow?

Mr. Franz Reinhardt: It's still linked to the designated organization only.

Mr. Brian Jean: That's where the confusion comes in, Mr. Chair.

•(1630)

The Chair: Can you tell me on what page and line the new proposed subsection 5.31(7) fits into the bill?

Hon. Mauril Bélanger: Line 29.

Mr. Franz Reinhardt: Page 11, line 29. After proposed subsection 5.31(6), you have proposed subsections (7) and (8).

[*Translation*]

Mr. Mario Laframboise: In French, is it after line 23?

Mr. Franz Reinhardt: Yes. No, excuse me, it is after line 26.

Mr. Mario Laframboise: In French, it is 26.

Mr. Franz Reinhardt: Yes, it is shorter in French.

[*English*]

The Chair: Okay, we're going to deal with the new one, both pages, and then we'll revert to amendment G-2.1.

Is there any more comment on the proposed subsection 5.31(7)?

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

The Chair: We're going to turn the page over and deal with proposed subsection 5.31(8), which would probably go on the same page.

Mr. Jean, do you want to speak to that?

Mr. Brian Jean: Yes.

The Chair: One, tell me on what line and what page.... And I know it should follow.

What's happened is that amendment G-2.1 is actually dealing with page 14, but we're referring to it constantly, I guess, to straighten this up. We don't have this implemented to make the changes, but we're working backwards.

Mr. Brian Jean: Mr. Chair, I would so move it, and I would ask the department to explain the rationale for this and where it follows in the bill.

Mr. Franz Reinhardt: Could you ask me the question again, please.

The Chair: I would like you to tell me where proposed subsection 5.31(2).... I guess we know it's going to follow the one we just dealt with.

But what is the rationale behind proposed subsection 5.31(2) being subject to proposed subsection 5.31(8), dealing with the standards and rules established by a holder.

Mr. Franz Reinhardt: What happened is that under proposed subsection 5.31(2)—

Mr. Brian Jean: I can explain.

Mr. Franz Reinhardt: Under proposed subsection 5.31(2), “A designated organization may exercise or perform the powers, duties and functions set out in its certificate of designation, which may be any of the following: (a) the establishment of standards” as well as “the establishment of rules”.

So we're saying that subject to subsection 5.31(8).... And then you go to that subsection 5.31(8), where you say that those “standards and rules established by a holder of a certificate of designation pursuant to subsection (2) shall be reviewed and approved by the Minister of Transport before being published in accordance with with subsection 5.36(2)”. That means the Minister of Transport keeps control over whatever standards and rules the designated organization is establishing.

I'm sorry, it looks a little convoluted, but it's all logical if you go from proposed subsection 5.31(2) to proposed subsection 5.31(8), and it's all lined up.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: If I understand correctly, in subsection 5.31(2), page 10 of the French version, line 32, we would add the words "Saving and accepting subsection (8)" before the words "Designated organization". Then, the subsection would read as follows:

(2) Saving and accepting subsection (8), a designated organization may exercise or perform the powers, duties and functions set out in its certificate of designation, which may be any of the following:

•(1635)

Mr. Franz Reinhardt: That is right.

Mr. Mario Laframboise: It is the first one, the letter (a).

Under (b), you add, on page 11, after subsection (7) that we just adopted, a subsection (8) that deals with established standards and regulations.

Mr. Franz Reinhardt: You are right.

Mr. Mario Laframboise: All right.

[*English*]

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

The Chair: Now we're going to refer to G-2.1.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, with your permission, I do not want us to forget the amendment of section 49(2) that is on the same page. Perhaps we could add it on page 63 or 64 and add it for upcoming meetings. It is a good government amendment, and I do not want us to forget it.

[*English*]

The Chair: I'm really wishful that we'll be at that point today, Monsieur Laframboise.

We're on amendment G-2.1, which is on page 42.1.

Monsieur Bélanger.

Hon. Mauril Bélanger: We've now concluded, except for this new subclause 49(2), everything dealing with designated organizations?

Okay. So we're now going into SMS, right, on page 42.1?

The Chair: Right.

Hon. Mauril Bélanger: Thank you.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I will move this, as follows: 5.3901 The Minister of Transport shall carry out inspections of the aeronautical activities of holders of Canadian aviation document documents who are required to have a management system.

The reason this is put forward as an amendment is quite frankly to deal with some concerns that were brought forward by members in relation to the SMS system in particular and inspections generally. It's very similar, I think, to LIB-6, but a little bit...maybe a little stronger, is what I thought.

Members will notice that I have changed “conduct” to “carry out”, to be consistent with what was mentioned previously by Mr. Reinhardt.

The Chair: Comments? Mr. Julian.

Mr. Peter Julian: That's not the....

Mr. Brian Jean: No. We'd heard from Mr. Reinhardt just a few minutes ago that we needed to have “carry out” instead of “conduct”, to be consistent with the language found throughout the text. So I amended that when I read it out.

The Chair: Are you saying that you amended this and removed “conduct”?

Mr. Brian Jean: Yes. I would ask for a friendly amendment.

This is based upon what the officials said.

The Chair: Okay. A friendly amendment has been suggested to change “shall conduct” to “shall carry out”.

[*Translation*]

Hon. Mauril Bélanger: No, the French would also have to be changed.

Hon. Joseph Volpe: It is the same thing in French.

[*English*]

Hon. Mauril Bélanger: Well, if it's in English, it should be “the Minister shall inspect”.

Hon. Joseph Volpe: *Mais en français*, “inspect” means also to “carry out”.

Hon. Mauril Bélanger: That's fine. Okay.

(Amendment agreed to)

The Chair: Now we're moving to BQ-16 on page 43.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: It means striking out line 36 on page 14 up to line 25, page 15. Thus, you want to strike out section 5.392 on confidentiality, simply for the sake of respecting the Access to Information Act. The most important thing is that all the information regarding safety management be accessible so that we can know what is happening if a company has a problem or anything like that.

• (1640)

[*English*]

The Chair: And for the information of the committee, there is line conflict with NDP-8.3 and NDP-9, and if this amendment is adopted, BQ-16, NDP-8.3, NDP-9, and G-3 cannot be put.

Mr. Jean.

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

The government in this case definitely would prefer G-3, as obviously it's our amendment, and we would suggest it deals with whistle-blowers in a better context, if that's what indeed the member is concerned with. But I would invite him to take a look at proposed subsection (3) in G-3 just very briefly to see whether that's more consistent with what he's interested in.

My understanding from talks with the department is that this, in essence, destroys the ability of SMS to work, and G-3 would allow SMS to continue working but still allow whistle-blowers. We were listening when it was brought forward by both the NDP and the Bloc and one member of the Liberal party who suggested it, and indeed, currently we already have non-punitive reporting methods under that. So we have four options for whistle-blowers, and we would suggest that G-3 would certainly deal with all the issues that have been put forward by the Bloc amendment of BQ-16 and on NDP-8.3 and still allow SMS to continue working as it's designed to do.

The Chair: Mr. Julian.

Mr. Peter Julian: I disagree with Mr. Jean on that, the elimination of this section. We've proposed other amendments, but I think when we look at BQ-16 what we're looking at is essentially the secrecy element around SMS, which is something that has been raised by a number of witnesses, and also the element of not taking action against, essentially, organizations that have a better document holder. So it is something that was flagged by a number of witnesses; it is a concern that is clearly out there. We are, I think, sanding down and refining the whole approach on organizations who are designated and also on the aspects of secrecy around SMS that people have legitimately objected to.

So there are two approaches that we can take. The Bloc approach has been to take out those sections. The NDP approach has been to provide amendments on it. Either way, it does deal with our broad concerns that were raised by a number of witnesses.

The Chair: Further comment? Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: I understand the government's objective. However, we still must read the essence of section 5.392 that says:

...any information disclosed under the process that comes into the Minister's possession is confidential, and the Minister shall not disclose it or make it available except in the following circumstances:

I do want the employees to be protected, but right now we are protecting the minister. He will be the one to decide whether or not something is confidential. I have a problem with this. If we want to get the details of an accident, the minister, because of this section, could decide that the documents are confidential. We mean documents that are in his possession and not information that is circulating within the company. These documents are in the minister's possession, and the minister could decide that they are confidential and cannot be published.

I am very reluctant to give such a power to the minister. I tabled my amendment, and you will discuss it. However, I have a problem with the fact that the minister could hide information or decide that it is confidential. I am not specifically targeting the Conservative government, I am talking about any future government including future Liberal or NDP governments, if that ever came about.

[*English*]

The Chair: Mr. Fast.

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

I would encourage members of the Bloc and the NDP to look at our amendment. They may misunderstand what the bill does and what the different reporting provisions are.

Mr. Chair, with your indulgence, could we have staff, perhaps Mr. Reinhardt, explain what the different levels of reporting are and why it's not necessary to remove the secrecy provisions? We've had witnesses from both airline pilots associations before us who say it's critical that there be confidentiality involved in the SMS process. If it isn't there, the reporting won't take place. And if we understand what other reporting mechanisms are going to be in place and are already in place, I think that will go a long way to assuaging some of the concerns that the members of the Bloc have.

Mr. Reinhardt, perhaps you could respond.

•(1645)

Mr. Franz Reinhardt: If you'll bear with me, I believe there's some confusion amongst the members about the type of protection here, and I would like to explain.

Yes, Mr. Jean.

Mr. Brian Jean: I'm sorry to interrupt, but actually we met with the department and we asked the department to provide some documentation that would help clarify. We have some flow charts that might be advantageous to the members.

Mr. Franz Reinhardt: Yes. We have some handouts here, both in French and in English, in point form, explaining exactly the type of protection under each system. This is critical, because if we don't give protection for this information, we will not obtain the safety data and we will not be able to use it to the benefit of the travelling public.

The Chair: I'm going to ask, Mr. Reinhardt, that those documents be circulated, so people actually—

Mr. Franz Reinhardt: Yes.

The Chair: Or do they have them now?

Mr. Brian Jean: No, they don't.

The Chair: Okay.

And while they're being circulated, I'm going to go to Mr. Volpe for a comment.

Mr. Volpe.

Hon. Joseph Volpe: Mr. Chairman, on Wednesday we dealt with a government handout that had an explanation of amendment G-3, and it was new. I'm asking for you to give us the official indication of exactly what we did.

Under amendment G-3, proposed subsection 5.392(4), relating to this, it said that the holder of a Canadian aviation document shall not take any action adversely affecting a person's employment or terms and conditions of employment by reason only that the person has reported, and then it was added "in good faith...information regarding alleged actions" of another person "under a process referred to in subsection (1)".

The reason I ask that is that when we were debating this matter, the explanation came forward that further amendments relating precisely to this proposed subsection would clarify all of this. To use Mr. Reinhardt's words—although not with any malice of intent—it is to reduce all the convolution to one rational argument that the person who makes a report, under the process outlined in this section, not be subject to any action by the designated company simply for having done things in good faith, because there are other subsections here that actually protect the certificate holder against somebody doing the opposite, which is to simply go out to the press without having had anybody be given the opportunity to actually address the issue.

What did we do with that motion? Did we accept it? Did we stand it? What is the government's view on that amended motion today?

The Chair: Mr. Reinhardt.

Mr. Franz Reinhardt: It's there under G-3. We will see that under G-3 you have a new subsection 5.392(3) and a new subsection 5.392(4). It was supposed to be distributed today.

Mr. Brian Jean: I thought there was an amendment as well on that, but I don't have it.

The Chair: We don't have proposed subsection 5.392(4).

Mr. Franz Reinhardt: It's coming.

Mr. Brian Jean: So is Christmas.

The Chair: Just for clarification, we have to remember that we are dealing with amendment BQ-16. We are referring to G-3 to see if that resolves some of the concerns Monsieur Laframboise has.

Could we get those circulated, please?

•(1650)

Mr. Peter Julian: Could we have a moment to look over this? It's fairly extensive.

The Chair: Yes, let's take five minutes. And if there are any documents that have to be circulated, please get them out now so that we can actually look at them.

Do you want me to suspend it first or do you want to put it on the record?

Mr. Peter Julian: No, let's not have it on the record.

The Chair: Okay, we're going to take a five-minute suspension.

•(1650)

(Pause)

•(1655)

The Chair: Thank you, and welcome back.

I think we have a little more clarity now with regard to Bill C-6 and what the G-3 amendment is.

Before I recognize Mr. Julian, I want to advise the committee that we are still dealing with BQ-16. This document was put forward to give Monsieur Laframboise an opportunity to look at it and see if it meshes with what he's thinking. It's certainly the one document we have that refers to clause 12 on page 15 and gives the details as the best piece of information we've had so far.

Go ahead, Mr. Julian.

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

I'd like to summarize, because I think we're talking at two different levels.

I certainly support G-3, and I think most people around the table do. G-3 is an important clarification of the clause dealing with the reporting mechanism. Where we might have some disagreement is on whether that protection for employees to report those violations—which is necessary, of course, to get that information—should actually be continued to the company.

We have here the enterprise manager simplified event review process of SMS-related non-compliance events and enforcement liaison. If we look down to the third yellow triangle, that's where I think we run into difficulties. Was the contravention internally reported and documented by the enterprise? If no, then the enterprise manager submits, within 12 months, a detection notice to aviation enforcement. Was the contravention committed intentionally by the enterprise? If yes, then it is the same result. Has the enterprise taken corrective action? If no, then it's the same result.

We certainly heard through rail safety that the problems have been enforcement of SMS. We heard the witnesses talk about the fact that essentially the government has to take railway companies to court to get corrective action.

Here there is a very clear weakness. In a case where you have deliberate company action or negligent company action or companies that have taken no action, essentially, the follow-up to that is to submit, within 12 months, a detection notice to aviation enforcement. We have this within the context of information that cannot be released, aside from court orders or the minister himself or herself choosing to disclose that information. And the information that is disclosed can't be used against the document holders. That's the problem.

I think we all agree that employees need to be protected. I strongly agree, and I think most of the witnesses said essentially the same thing, that we can't give a "get out of jail free" card to companies that may be negligent. It may only be a small proportion of the companies. But I believe that we cannot put the Canadian travelling public in a situation in which, first, they are unaware because of the secrecy around what could be repeat violations of safety standards by a company, and in which, second, essentially the company is protected from the type of regulatory enforcement and sanctions that should necessarily come with them. That's the problem.

I would suggest, in that context, that we should be adopting G-3, of course, but we should also be seriously looking at BQ-16. That eliminates the bad from that clause and reinforces what I think we all agree to, which is protection for employees.

• (1700)

The Chair: We'll have Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I appreciate the government's effort to clarify things for the employees. But I have a problem with section 5.392 that deals with protecting the public.

Basically, a safety management system must make sure that there is a follow-up, there must be documentation and employees must be allowed to disclose cases of neglect. In my opinion, when everything is said and done, when the report is tabled, the minister can say that it is confidential pursuant to the act. He will not even be able to publish it, unless he "[...] considers that disclosing the information or making it available is necessary for the purposes of section 7.1". This remains to be seen, because he is liable to be sued, and the government might have some serious problems.

I want to protect the public. In any case, when a report is published pursuant to the Access to Information Act, many things are blacked out. But we at least have access to the information. When the minister receives a report, it is because of some important event, probably an accident or something due to neglect. Small things that remain unnoticed and are not reported on television will not be investigated and there will be no demand for access to information. This will only happen if the accident shows up in the media. Sometimes, it does not have to be big, as we saw regarding railways. It does not have to involve mortality. It can be so big that if we do not see it and try to prevent it, there could be a catastrophe.

Therefore, in the safety management system, all the information would become confidential and inaccessible to the public. I have a problem with that. I agree that we must protect the employees, and we are protecting the employees, but under section 5.392 we are protecting the company and the minister above all. At any time, he can say that it is confidential and that he is not publishing anything at all. That is what will happen.

[*English*]

The Chair: Mr. Julian...or Mr. Jean; I'm sorry.

Mr. Peter Julian: No, we've actually adopted him into the family.

The Chair: Before I let Mr. Jean comment, I will advise the committee again that if BQ-16 passes as it stands, then NDP-8.3, NDP-9, and G-3 are not admissible. You're removing clauses that G-3 actually refers to.

Mr. Peter Julian: On a point of order, Mr. Chair, I would disagree with the ruling on G-3.

The Chair: While I appreciate your opinion, I will go to Mr. Jean and then to Mr. Volpe.

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

I'm glad to hear that the NDP will not be running a candidate in Fort Murray—Athabasca. That will give me another 15 points.

Could the department comment on those two issues, the enterprise management detection and also what Mr. Julian was talking about—a year, and so on? It just seemed, from the expression on your face, that it was not quite believable.

Mr. Franz Reinhardt: I was a little bit surprised.

I saw that some documents were distributed, Mr. Julian, with respect to enforcement, which will come up later on. So it has nothing to do with the protection provisions under proposed section 5.392 or the universal voluntary reporting.

• (1705)

Mr. Peter Julian: We may disagree, but—

Mr. Franz Reinhardt: Well, it will have something to do with it when enforcement comes into play, but we're not talking about enforcement here.

I see you reading this, and I would like you to read this. I'm trying to explain voluntary and non-punitive reporting and also SMS protection. If I were given the opportunity to explain, you would see how important it is to the gathering of safety information.

Let me explain. There are two systems. Each company governed by SMS will have an internal reporting process where employees are encouraged to report. I'll take you to the page that says "Reporting process". Proposed section 5.392 is applicable to organizations governed by SMS. It's available to any employees within the organization, to encourage reporting. Employees can even report that they have committed a violation without fear of reprisal. Information is reported to the organization, not to Transport Canada.

There is no report, Monsieur Laframboise, to Transport Canada. It's reported to the organization. The information is used to analyze hazards and take corrective measures. If we don't tell them it's protected and that it's not going to be in a newspaper tomorrow, they will not report. If they have committed a blunder, a breach of one of the standard operating procedures, they need to be protected. The information would not necessarily have been available to the organization before Bill C-6. When there is no protection, they do not report. Bill C-6 will encourage internal reporting by providing protection of the information and the reporting employee.

On the second page, for those who want to follow it with me, the internal information is protected even if it comes into Transport Canada's possession during inspection, audits, and assessments. It's not our intent to go and get that information, but we may from time to time. We need to be there to validate systems. We need to be there to inspect. We need to be there to audit. Transport Canada is saying that if it comes into our possession we will not use this for enforcement purposes. We want employees to report to the employer and we want to guarantee that we will not use it against them.

Also, it is protected from access to information. These days they are not reporting because they don't have protection. They want to report, so this is the guarantee we're giving them.

The information cannot be used for disciplinary purposes against reporting employees, except in accordance with the non-punitive reporting policy under SMS. Each company will have its conditions. They will tell employees that if they do things wilfully, of course they will be punished. If a report is error-based and it is not wilful, they will not punish.

You will see there has been an add-on to the protections with respect to a person reporting about another employee. That is to make sure there will not be reprisals against a person.

The information cannot be released under ATIP if it has been obtained by Transport Canada. If it has been obtained by Transport Canada, the information may be used to advance safety, but only after being de-identified. We want to protect the travelling public. We want to advance safety. We can do this. We don't need the name of the person; we want to use the aggregate safety information.

A court can always obtain information under the power of subpoena. The TSB has that power. This is not usually the type of information the TSB will want, because they will have evidence and other... But if they wanted that type of information for whatever reason, they have authority to get it.

Also, if the safety of operations is considered to be jeopardized, Transport Canada may use information to substantiate administrative certificate action under proposed section 7.1. The minister can issue a civil aviation document, a CAD. The minister can remove that document if a company no longer meets the conditions of issuance or if it's in the public interest. Sometimes the only way we can prove there is a problem is with the evidence that is there. In that case, the minister could use it. He would not use it for enforcement purposes, because we gave our commitment; however, if there is such an egregious situation in a company that we need to refer to some of those elements, the minister can use it. It is the best of both worlds.

● (1710)

This is one system of reporting under SMS. I'm telling you again: If you don't have those protections, the information will not come flowing in. The companies cannot do their trend analyses. They cannot use their risk assessments. They cannot take corrective measures, because things will simply not be reported. You have the whistle-blower type of protection there, and you also have the protection for access.

The other system is the universal non-punitive reporting process, and this one, you will see, is under proposed section 5.395 of the Aeronautics Act, dealt with in clause 12 of Bill C-6. This is universal, and it's voluntary. Anybody can use this. It is applicable and available to anybody anytime, anywhere to report any type of information relating to aviation safety or security. It could be a flight attendant reporting; it could be a pilot or a co-pilot. It could be a janitor on the floor seeing a safety situation that he or she needs to report.

The program is established and funded by the minister, but it's intended to be administered by an objective and independent third party government agency such as NRC, TSB or another. This is similar to what they have in the United States. It's called the aviation safety reporting system, funded by the FAA but administered by NASA. I have included a website link there, so if people want to get more information, they can get a pretty good idea of what is done with the information. There is lots of feedback and lots of good information coming in, but there's some protection.

Persons may even report, without fear of reprisal, that they have committed the violation. Information is reported to a third party government agency, not Transport Canada. So Transport Canada is not there.

The information is used to gather as much evidence, as much aviation safety data as possible to perform trend analyses, studies, reviews, and examination of hazards and incidents to advance safety, inform others of potential safety and security pitfalls, and prevent recurrence. It is information that would never be reported if no protection were provided to the reporting person. The information reported is de-identified within a very short period of time. Usually—and it's going to be done through regulation—it's between 24 and 48 hours. The person writes in, and there's a strip. The strip is detached and sent back to the person to show it was de-identified. But before doing this, the agency will call and try to get as much information as possible, and then de-identify it.

The information cannot be used for enforcement action or any legal, disciplinary, or other proceedings. The information cannot be released under ATIP until it is de-identified. Of course, when it is de-identified, it's going to be released and used also by the minister and by that agency to advance safety. The aggregate information may be used by the custodian repository government agency and Transport Canada, as I just mentioned, but only after being de-identified.

The protection for the reporting person applies even if proceedings are initiated against the person based on independent evidence obtained outside of the program. Let me give you an example. Someone reports there and says, "It wasn't intentional. I did that", and they receive a receipt for this that will allow them to oppose this if someone wants to prosecute. Then he can say, "Hey, I did report", and just as it is in the States, I have that "get out of jail" ticket here, provided that:

- (1) the person has reported through the program;
- (2) the information doesn't relate to a reportable accident or incident, because TSB requires that those things be reported, so they have no protection there;
- (3) the alleged violation was not committed wilfully. Again, if there is evidence and inspectors can prove that things were done wilfully, there will be no protection;
- (4) the person is not found by a court or tribunal to have committed a violation of the Aeronautics Act within the previous two years;
- (5) the person has not made use of the protection before a court or tribunal within the previous two years;
- (6) the person has already—in case they are working for an SMS company—reported the event through the internal SMS reporting process when the person is employed by an organization governed by SMS.

•(1715)

Again, there's lots of good information here. The American website will show you how much good information there is, which you won't get if you don't give the protection. It is of the utmost importance to have the protection in order to get people to report. Otherwise, they won't report.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: I appreciate Mr. Reinhardt's elucidation of exactly where we are, and I sincerely thank him for that.

Contrary to what some of the other colleagues around the table might be thinking, I think the last time we actually addressed any of the amendments was when I asked for a clarification on amendment G-3. The government now has a new amended G-3 before us.

On the decision about whether or not we deal with G-3 or the other amendments that come before it, including amendments BQ-16, NDP-8.3, NDP-9, and the original G-3, quite frankly, they're all captured by this. This section deals with issues that have to do with items pertinent to whistle-blowing and the whole function of SMS.

While I appreciated the presentation given by Mr. Reinhardt and the question posed by Mr. Julian, this matter is the one that I would

like to deal with. I would like you to call the question on amendment G-3.

The Chair: The amendment that's on the floor right now is actually BQ-16. Amendment G-3 has been offered to try to find a compromise.

Monsieur Lamframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Reinhardt, despite my respect for you, it is quite possible to protect employees who want to make revelations without protecting the information which is in the hands of the minister.

If the minister receives information, it's because there was an investigation. What you are telling me is that if, at the end of an investigation, the information given to the minister does not remain protected, companies will stop providing information, will stop producing reports and will not participate in the SMS. Is that what you're telling me?

Mr. Franz Reinhardt: Usually the company has that information, and not the minister.

Mr. Mario Laframboise: That's why I don't have a problem with it.

Mr. Franz Reinhardt: We spoke with employees, unions and companies. They know that when we conduct an evaluation, a verification or an inspection, some of that information may be gathered by the minister and end up in some room within a government organization. If that should happen, they would want the information to remain protected. Otherwise, they will not produce any internal reports. If the information is not protected, you lose. In any case, the Access to Information Act would apply. Contrary to what Mr. Rubin said, our verifications are accessible under the Access to Information Act. We transmit the information and corrective measures. There is no danger on that side. We want to have the guarantee that any special information on-site be protected.

[*English*]

The Chair: Mr. Julian, for one last comment, and then I'm going to call the question.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, in the course of these discussions, you are not allowed to prevent us from speaking. Unless I am mistaken, you do not have the right to interrupt.

[*English*]

The Chair: Mr. Julian, you're on the list. I'll go back to him.

Mr. Peter Julian: No, Monsieur Laframboise hasn't completed.

The Chair: Okay. Monsieur Laframboise.

Mr. Peter Julian: I prefer to be on the list, but please let Monsieur Laframboise finish.

[*Translation*]

Mr. Mario Laframboise: I repeat, it is possible to protect the information provided by an employee and to protect the safety management system without having to protect the information which is ultimately given to the minister. It is possible to do this. Do you agree with me?

Mr. Franz Reinhardt: If the information which the minister ultimately receives is the same as the information revealed by employees at the start of the process, and if the employees are afraid the information could be made public under access to information, they will not go ahead with a report. The information which is brought to the direct attention of the minister is not protected.

We are talking about information held by an SMS company. The company has the right to protect its information and its employees. That's what we're talking about.

Mr. Mario Laframboise: In any case, the company is protected under the Access to Information Act. It has that right.

• (1720)

Mr. Franz Reinhardt: That's right.

Mr. Mario Laframboise: I agree with you.

Mr. Franz Reinhardt: However, a leak is possible, for instance when the minister carries out an inspection during which he looks over the shoulder of... Our inspections are good, and in some circumstances, we can get information which is protected. It makes perfect sense that it would continue to be protected.

[English]

The Chair: Mr. Julian.

Mr. Peter Julian: This is really the weak link in the bill. I think we've done good work. I think the government has been forthcoming in responding to problems that have been identified as we've moved through the bill. This is the weakest link in the bill, and we have to address this issue.

On the employee side, I think there's a broad consensus, but to protect a rogue CEO who decides intentionally to commit safety contraventions or who refuses to take corrective action, what we are essentially doing.... And that's the link back to what the consequences are, because we've seen, with rail safety, an increase in accident rates when there are no consequences

Let's assume for a moment there's a company—let's call it Air CN—that decides that it's going to cut back on its safety requirements because, through the SMS process, they are protected. What we have in the proposed section that is affected by BQ-16 is that the minister shall not disclose information or make it available except through the court or if the minister considers disclosing the information. In other words, we're giving that power to the minister to decide whether or not to disclose. If not, you have to go through court.

Secondly, information that's disclosed under that process may not be used in the taking of any measure or in any proceedings against the document holder. That's the problem, not the issue of the employees. We agree on that.

The problem is giving, as Mr. Reinhardt has said himself, a “get out of jail free” card essentially to companies, most of which will react very responsibly, some of which may not, and I am not prepared to say to the Canadian travelling public, that's fine, you will have this process in place with the enforcement mechanism of an enterprise manager submitting within 12 months a detection notice to aviation enforcement. I don't think Canadians will accept that, and

I don't think Canadians will accept that they may be travelling on an airline that is in clear violation and the information can't be released.

The travelling public has the right to know when a company is systemically violating. The travelling public has the right to know when there's no corrective action being taken. The Canadian public has the right to know, and we simply cannot rubber-stamp this proposed section. We have to deal with it.

I think amendment G-3 is part of the solution, as Mr. Volpe said. Mr. Laframboise's motion is part of the solution as well, but we have to deal with this section. We can't give a “get out of jail free” card and we cannot subscribe information that might be critical for the travelling public from any method of getting that information out in the public domain except the minister deciding himself or herself, or through the court system.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: Perhaps I'm a little too generous in my desire to see and hear good information. I've had a different perception about Mr. Reinhardt's use of that particular phrase.

So I think I've heard a lot, Mr. Chair, and I don't want to discuss the philosophy of the whole thing over again, but if it is your wish to go through clause-by-clause, then let's start to vote on BQ-16 right now, please.

I had initially hoped to move the thing along by addressing G-3, but I guess we're not going to have that. So would you please begin the calling of the question.

Mr. Ed Fast: Call the question.

The Chair: Mr. Laframboise.

Mr. Brian Jean: With respect, Mr. Chair, a point of privilege.

The Chair: A point of privilege?

Mr. Brian Jean: Well, I was indeed on the—

The Chair: Yes, I'm sorry, you are on the list.

Mr. Brian Jean: I have listened attentively and I have studied this, I think, possibly more than any other member, but maybe not some of the members who were on the transport committee before. I think all of us have made up our minds in relation to the theory, for the same reason we are in political parties that are different. But I don't think anybody's mind is going to be changed right now on their position moving forward in the future on this.

Quite frankly, I think we've heard enough and we've thought about it enough and we've talked about it enough and we've discussed it enough and we've done enough charts and had enough information. We have the information. The question is, are we going to agree? And I don't think we're going to agree, so we have to agree to disagree.

I would suggest that if we put the question forward, then you're going to find a result that you either do like or don't like, just as we've put forward some that we didn't like, but we found a compromise.

• (1725)

[Translation]

Mr. Mario Laframboise: Except that, Mr. Chairman—

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: I want this to be clear. When we study a bill clause-by-clause, we have the right to speak for as long as we wish. Unless I'm mistaken, and please correct me if I'm wrong, Mr. Chairman, I believe I have the right to speak for as long as I want and to say what I want. I am not trying to draw out the debate nor am I engaging in obstruction. I want to understand what these people are telling me.

However, I do have a problem when people think I'm an idiot, Mr. Chairman. I don't have a problem with the explanations I am being given. Mr. Chairman, I want us to understand each other, you and I.

When we study a bill clause-by-clause, can I have the floor until I understand? Do I have the right to do so? If the answer is no, that's fine, but in my opinion, I have the right to ask any and all questions I want.

[*English*]

The Chair: I think we have heard enough conversation on your motion. There seems to be a willingness around the table to move to the question.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, I asked you a question. During the clause-by-clause study of a bill, do I have the right to ask any questions I want? Please take the time you need to consult with the clerk and with anyone else you want, but I would like you to make a decision.

[*English*]

The Chair: As I check the list, Monsieur Laframboise, you've spoken seven or eight times. From the chair's position, we're hearing the same argument.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, please don't play games with me. I could tell you all kinds of other things, but I don't want to do so. I want to ask questions of these people and I want to get answers, that's all. Do I have the right to do so? If I don't, please tell me, but if I do, I would like you to listen to me.

[*English*]

The Chair: You have that right.

[*Translation*]

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

Mr. Reinhardt, you are trying to tell me that if, at the end of an investigation into an accident, the minister is not obliged to protect all the information, or if the information is not protected, the entire system will not work.

Mr. Franz Reinhardt: Mr. Laframboise, you are talking about cases involving accidents. Unfortunately, the minister never investigates accidents. That's the job of the Transportation Safety Board.

Mr. Mario Laframboise: Fine, I'm sorry.

Mr. Franz Reinhardt: The Transportation Safety Board is authorized to obtain any information it deems necessary. The minister never investigates accidents.

Mr. Mario Laframboise: Perfect. So when confidential files end up on the minister's desk, it's because something happened. Give me some examples.

Mr. Franz Reinhardt: After a verification or an inspection, which is usually conducted into a company's SMS, it is possible that the minister reports on information contained in the company's voluntary reporting process. That information would be protected, as it would be within the company. The protection exists to gain the trust of the employees and to guarantee that they can come forward with information without fear of reprisals, that the issue will remain between them and the company, and so that corrective measures can be taken to improve airline safety.

So these are all the protections which exist. We are acting in good faith. Should a tribunal ever subpoena information, it could do so. If the minister needed information for safety purposes, he could block out the identity of the people involved and use that information. If the minister needed information to shut down a company, he could also do so. It is therefore the best of both worlds. The minister can use the information, as long as it is not used to identify the people involved and to take reprisals against them.

Mr. Mario Laframboise: No, but—

Mr. Franz Reinhardt: This is not at all the voluntary system which Mr. Julian was referring to. It's completely different.

Mr. Mario Laframboise: The point is to protect the company's information and also to protect its employees. It is quite possible to protect the system as it is. There are many clauses and we will review them one by one later on. I have no objection to protecting employees. Rather, I'm wondering about the public's right to know. Will that never happen?

• (1730)

[*English*]

Mr. Merlin Preuss (Director General, Civil Aviation, Department of Transport): France has been answering the same question in the same way. If you go back to the intent of proposed section 5.392, it talks about information gathered under SMS, and that is non-critical information in terms of a major incident or an accident. It is critical information to prevent an incident or an accident. If it's reportable, it can't be protected because it didn't come through the process. This is information gathered through the reporting system, demanded by the SMS. If it's a reportable incident, it's in the public domain and it's handled differently. If it's an accident, it's in the public domain. It's handled differently—the coroner's involved, the safety board's involved. They have all the powers in the world. This is the basic information on hazards that's being protected.

Proposed section 5.392 says “collected under this process”—in other words, the SMS process—not collected by Nav Canada under the CADORS process, not collected by the safety board through their accident investigations. This is the basis of the SMS. It's the small things that are prevented from growing. If that information comes into our hands by one means or another in the department, we want it to be protected, because it goes right back to the individual who reported the minor infraction, the minor error, the non-mandatory reportable incident, which will come to light as it does today. If we don't give them some sort of protection, as France has said many times, we will choke off a source of valuable data to improve the safety performance in this country.

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, I have to disagree somewhat with the words of the parliamentary secretary in terms of “we've heard it all”. I have to acknowledge and recognize, as I have already on a number of occasions, the willingness of the government to bring forward amendments. I think the legislative process calls for a continuous exchange, an ongoing exchange, until there's satisfaction that we've got pretty well the whole picture, then people will decide yes or no. As long as there are legitimate questions, I believe the debate is useful.

[*Translation*]

After all, brain storming can lead to great ideas, if I may put it that way.

I really don't like the idea of being prevented from speaking because debate is cut off, or when debate goes on for an inappropriate length of time. But I have the impression that that's what we are headed for. I personally think the discussion is just beginning. I hope so for Mr. Laframboise's sake.

I'll tell you how I got to this point. At a meeting with the officials, I asked as many questions as I could. I am satisfied with what Mr. Preuss has just said, namely that the government would normally not have the information referred to in these provisions, except in the three specific circumstances, that is, when the identities of the people involved have been removed, when a case is before the courts, or when other organizations impose disclosure, or in cases which fall under subsection 7.1. So information can be disclosed in certain circumstances, but which would not exist if there were no safety management systems.

So I accept the argument, and I can tell you that I am doing so because of an amendment you moved and which was adopted by the committee. It says that there shall be a review in the three years following the coming into force of these provisions. Perhaps this condition put everyone's mind at ease. I realize that the review applies to clauses 5.31 and 5.38. Perhaps we should introduce a provision imposing a mandatory review in five years. The minister will obviously have a ton of information after receiving all the reports on the safety information systems. At that point it can be decided whether or how any information was disclosed.

For now, what has helped me understand and accept the amendments—and I hope I am right about this—is the fact that we will be dealing with information which the government would otherwise not have. Apart from the possibility that the information may be made public, under other statutes the government must report

on the information. This may make air travel even safer. That is why I support this idea. It was important for me to say so. In these circumstances, I am satisfied and ready to move forward. I also think we must respect all parliamentarians sitting at this table. If some members have legitimate questions, they should be allowed to ask them, even if that means sitting extended hours or more often, Mr. Chairman.

Thank you.

• (1735)

[*English*]

The Chair: Mr. Bell.

Mr. Don Bell: Thank you.

I'm trying to clarify my understanding of what we're doing. I'm relating it, I guess, to the rail safety issue, and that's what I would like. I realize that's not your area directly. But I'm referring to proposed section 5.392 in the binder we have here, and I'm looking at proposed subsection 5.392(1), which says, “any information disclosed under the process”. I'm thinking of the audit that was ordered against the rail companies, and I'm seeing a parallel here. If it says “becomes confidential”, I have a problem in that the rail information couldn't be made available to this committee and public at the time because it was a third party. What I see here is saying that if an audit is ordered—I thought I heard you earlier use the term “audit”—it would remain confidential.

Mr. Franz Reinhardt: No. They are two different processes. What you're talking about, the rail audit conducted...if we conducted an air audit like this, the information would be available. Here, under this process, this is the internal SMS reporting process between employer and employee, something totally different.

But if, when we inspect, we happen to have information that may come on our premises, it's still protected, because these people know that if the information is released now they will not do it in the future. In an airplane, when the pilot or the co-pilot realizes there is a problem and reports it, the passengers would be very happy to have the pilot report the problem so that it can be fixed, rather than say, “I'm not going to do this because I made a blunder here and I'm going to have reprisals against me.” So you want them to report.

So this is the type of information that will be reported. When a special audit is called, like the CN-type of audit, it is a totally different process. It is not the same process that you have here.

Mr. Don Bell: Okay, but the reference, too, says that if they have a management system in process, that is not a protection for them. It's only if that information comes into that process?

Mr. Franz Reinhardt: I want to make sure I understand your question.

Mr. Don Bell: Proposed section 5.392 talks about if “a holder... has a management system with a process that requires or encourages”. I'm referring to the rail companies. They have an SMS program.

Mr. Franz Reinhardt: They do, but it's not identical to what we have on the air side. I'm not sure, with all due respect, that they have as sophisticated a process as we have here.

Mr. Don Bell: In fact, we made reference during a discussion to how superior the Aeronautics Act was to the Rail Act, and we're looking at beefing up the Rail Act in comparison.

Mr. Franz Reinhardt: Exactly.

Mr. Don Bell: I just want to make sure that we're not creating, in fact, an out here.

Mr. Merlin Preuss: I think maybe the way to clarify that is to ask what is the source of the information that we're speaking about, and it is from the employees. The process is for employees to report. The source is the employees. It's not a formalized audit. Anything that's generated by Transport Canada by way of an activity is totally transparent. It's ATIP-able.

Mr. Don Bell: If an employee reports something through SMS and feels—I'm going to raise this as hypothetical—that no action is being taken by the company, so they then leak that information or make that information available, and then an audit is ordered as a result of that information coming in a different way, does the fact that it was originally reported under an SMS protect that—

Mr. Merlin Preuss: It doesn't matter. No.

Mr. Franz Reinhardt: No. If we conduct an audit and we conduct interviews of witnesses during our audit, outside of that process the information is part of government information. The audit, it's available.

• (1740)

Mr. Don Bell: Okay.

On page 15, line 11, I notice that between paragraphs (a) and (b) there is no “or”, but between paragraphs (b) and (c) there is an “or” at the end. So do I understand that paragraphs (a) and (b) must both occur, but paragraph (c) is an alternative to paragraphs (a) and (b) together?

Mr. Franz Reinhardt: Either. It's either/or. It's one or the other.

Mr. Don Bell: Okay, but it says “disclose it except in the following circumstances”, (a), (b) or (c). Should it be (a) or (b) or (c)?

Mr. Franz Reinhardt: Yes.

Mrs. Susan Stanfield: That's the meaning. But the drafting convention is that you put the “or” at the end of the second last item.

Mr. Don Bell: So the absence of “or” after paragraph (a) doesn't mean that you have to have (a) and (b) or (c).

Mr. Franz Reinhardt: No.

Mrs. Susan Stanfield: No.

Mr. Don Bell: Okay, I guess that answers my questions. Thank you.

The Chair: Mr. Julian.

Mr. Peter Julian: Only a question. Is the Air Transat audit available, or is it protected?

Mr. Merlin Preuss: Air Transat audit? We don't publish them, but they're available through ATI.

Mr. Peter Julian: So if an organization made a request through ATI, they would get a copy of it. Is that right?

Mr. Merlin Preuss: Yes, that's standard practice.

Mr. Peter Julian: My understanding is that requests were made to ATI and they've been denied.

Mr. Merlin Preuss: For which—

Mr. Peter Julian: For Air Transat.

Mr. Merlin Preuss: For which audit, sir?

Mr. Peter Julian: The safety audit.

Mr. Merlin Preuss: The safety audit on their audit manual?

Mr. Peter Julian: Yes.

Mr. Merlin Preuss: It will be provided; it has to.

Mr. Peter Julian: My understanding is that it hasn't been. If you clarify that for Wednesday, I would—

Mr. Merlin Preuss: Well, if you tell me which one and what date. They've had audits ever since they've been in existence.

Mr. Peter Julian: I will get all that information to you. I'd appreciate getting it back on Wednesday.

I'd like you to steer us through this because—

Mr. Franz Reinhardt: I'm sorry, Mr. Julian. I believe you asked for information on the Air Transat—

Mr. Peter Julian: That was for SMS, that's different.

Mr. Franz Reinhardt: —on the assessment we've made, and it was all provided.

Mr. Merlin Preuss: Are you talking about the last audit?

Mr. Peter Julian: I'm talking about the safety audit, not the compliance with SMS.

Mr. Merlin Preuss: Okay, then give me the date and which one and we'll get that to you. That's absolutely—

Mr. Franz Reinhardt: And our rule is that usually when we give the audit we give the corrective measures that were brought forward, for the fairness of the company.

Mr. Peter Julian: I want to come back to this, because you're certainly clarifying what would be protected by this proposed section and what is not. We appreciate that. But essentially, if we go back to the enforcement mechanism, we have a company—let's call it Air CN—and their mechanics, protected through the SMS process, systematically report violations in process, safety violations in the airline. The enterprise, the company management, doesn't document that. This is information received through the SMS process, and the company is simply not documenting it. I see from this process what the enforcement mechanism is, but I'd like you to lead us through it.

This has happened. The employees are protected. They're reporting systematic violations, safety violations of maintenance. What happens then? The company is not documenting it.

Mr. Franz Reinhardt: If Transport Canada is aware of a maintenance violation, it will investigate. If it investigates, then you apply the full chart you see here. If Transport Canada is not made aware of a violation, it will not investigate.

Mr. Peter Julian: Let's say Transport Canada is made aware. What happens then?

Mr. Franz Reinhardt: Transport Canada is made aware of the alleged violation. You take the flow chart, the enterprise manager, because we have one person responsible from cradle to grave of a company. From the establishment of the company to the death of the company, if you want, there's one individual in charge and accountable. What the person will do is receive information, detection sources, conduct a preliminary event review. He would ask "Was there a contravention of the act, yes or no"? If no, there's no problem. If yes, the enterprise manager may request enforcement within 30 days to secure perishable evidence—there may be ATC tapes or things like that—so they secure the evidence.

"Was the contravention committed by person or enterprise governed by SMS?" If it's no, existing enforcement procedure... If it's yes, "Was the contravention internally reported"? They verify. The principal inspector verifies. If it was internally reported, that's fine, we continue. If not, we go immediately to the old enforcement process. We want the company to report.

• (1745)

Mr. Peter Julian: I am sorry, would you say that again?

Mr. Franz Reinhardt: Okay.

If I am made aware of a maintenance violation by Air CN, and I check with them and it's not internally reported, well, we won't be very forgiving. We'll go straight to the old enforcement process and charge them and prosecute them.

If it is internally reported, now we'll check whether the contravention was committed intentionally by the enterprise. It could be one of those error-based violations. Or it could be obvious—it's a big overloading of an aircraft by 2,000 pounds—and it's obvious that they knew they were doing it. At that time, if we say it was intentional, again we get out of the SMS system and go to the normal enforcement process, and we're very harsh. And I can tell you that we have increased penalties.

If it is not intentional and it was internally reported, we are quite happy, because we know that it is a mature, responsible company that wants to look after business and make sure they fix the problem. So we will work with them to see whether they take corrective measures. If they do take corrective measures, we may agree or not agree with their corrective measures. We may go back and say that it is not enough for us and we need two more. If they give us what we want in terms of satisfaction with the corrective measures, we will carry on.

It asks if the nature of the contravention necessitates the enterprise submitting a plan. If yes, then you go to the enterprise measure requesting that the enterprise submit a plan. You review the plan, and if it's fine, that's the end of the process quality loop. We verify. If we're not satisfied, we take enforcement action again.

This is the SMS system at its best, because we can charge a company. We have all the tools, and we have all the increased penalties for enforcement. If they work well with us and take the proper corrective measures, that is what we want. We want to advance safety. We don't want to just shut down a company and come up with a \$100,000 fine if it's not required.

The Chair: No.

Mr. Peter Julian: I'm sorry, Mr. Chair, I have some follow-up questions to that.

The Chair: Okay.

Mr. Peter Julian: We have a situation in which all this information is through the SMS system. What you're saying is that when Transport Canada acts and gets additional information, then essentially the consequences can be brought in but the information obtained through SMS cannot be used to prosecute that airline. Am I not correct?

Mr. Franz Reinhardt: I can tell you that most of the time, in our experience with SMS companies, they call the enterprise manager. They call the principal inspector and say, "Listen, before you learn about it through the media or anybody else, I want to tell you that we screwed up yesterday and did this, and these are our proposed corrective measures." This is the mentality now of the companies.

Mr. Peter Julian: That wasn't my question. I'm not concerned about the law-abiding companies. There are very many of them out there. I'm concerned about the renegade or rogue companies.

From what we've learned about rail safety, that is a legitimate concern. So I'll come back to my question. The information that comes through the SMS process can't be used against a company. Am I correct?

Mr. Franz Reinhardt: I don't have the internal information, because it's internal. But if the same employee comes to me outside the SMS and says that he or she has reported something three times to the employer and has asked him to do something, and he has not done something so the person is telling me, then yes, we can use this, and we'll do something with it.

The Chair: If I may interrupt, there doesn't seem to be too much willingness to move forward on this. We'll defer it until next day.

I want to move to Mr. Jean's motion. So I'm going to take a two-minute pause, and then we'll come back and deal with that.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: I only have a series of questions left, if that makes you feel any better.

[*English*]

The Chair: I'm going to defer it until Wednesday, because we are running out of time, and this room is booked for six o'clock.

[*Translation*]

Mr. Mario Laframboise: Perfect.

[*English*]

The Chair: With that, I will pause—

Hon. Mauril Bélanger: Maybe they could move, Mr. Chairman, given that I'm not too sure who is coming. They may be colleagues of ours. Don't parliamentary committees have precedence?

The Chair: Yes, they do.

Hon. Mauril Bélanger: So if there's a will to continue until the vote tonight, perhaps we could.

Mr. Brian Jean: Absolutely.

The Chair: I would look for that agreement at the table.

Mr. Peter Julian: Mr. Chair, who is coming at six o'clock?

The Chair: It's the Liberal Party, and we do have...whatever the right word is.

If it is the will of the committee, we'll continue with questioning. As I said, I would like to get to some resolution on this at some point before the day is out.

Go ahead, Monsieur Laframboise.

• (1750)

[Translation]

Mr. Mario Laframboise: I have a final series of questions, Mr. Chairman, and then I will be finished.

Mr. Reinhardt, it is true that as soon as an accident happens the Transportation Safety Board steps in. I have no problem with that. However, since under paragraphs (a), (b) and (c), the minister may have to disclose information before the courts, that would in all likelihood happen in cases involving accidents. Otherwise, I don't see why he should reveal the information to a court. Do you agree?

Mr. Franz Reinhardt: It could involve cases where legal action is taken to collect damages, for example, or for any other reason.

Mr. Mario Laframboise: Indeed, if a case ended up before the courts, it's because something serious would have happened.

What you are basically telling me is that within the framework of the safety management system, employees are encouraged to come forward with information. I agree with that as long as the system protects the employees. However, we are dealing with a situation where the minister has information on a company which, for various reasons, has been collected over the years.

Mr. Franz Reinhardt: It's usually only when we check their system that we can obtain bits of information. Most of the time, the information stays with the company. As a result, I don't think that a lot of information would have been accumulated.

Mr. Mario Laframboise: The SMS was already in place in some companies. Did you recover information on certain companies?

Mr. Franz Reinhardt: We would check to see if the internal alert system was working. Generally speaking, we don't bring any information back with us. If things work well, we indicate that the business has a certain type of system, that it works well; we indicate how many employees there are and what forms were used, but we don't specify, for example, that five incidents were reported, including a violation. We try not to do so, but it might happen.

Mr. Mario Laframboise: Has that happened yet?

Mr. Franz Reinhardt: Yes, but not in cases where people could have been... We try not to touch that information.

Mr. Mario Laframboise: Fine. All right.

Mr. Franz Reinhardt: But I cannot guarantee that, sir. There may have been cases.

Mr. Mario Laframboise: Will you have to report more cases under the bill or will your way of doing things stay the same?

Mr. Franz Reinhardt: As Mr. Preuss always said, we try to make sure that what happens internally remains, as much as possible, between the employees and the company. But when we conduct an inspection and give a company a good mark once we're back at the

office, we do note certain details about the systems. In those cases, for instance, we might indicate that 25 incidents were reported, but that good decisions were taken, such as corrective measures, etc. It proves that the system works. Will we detail the reported incidents? We try to do that as little as possible, but once in a while we may report details.

Mr. Mario Laframboise: My problem is that from the moment when the minister will have to table the documents, the information will become public. If I cannot ask the minister whether he has information on a company, and, as the case may be, to provide us with the information or to make it public, I have a problem with that as a member of Parliament. If my colleagues don't, I'm not worried about it, because that's their business. So the minister would be able to protect a great deal of detailed information on a company. As you said earlier, there may be consequences for a company, including losing its licence. The company could, for example, take the government to court and the case may end up before the courts. But under the bill, the minister would not be able to make any information public because of the investigation. That's what I'm wondering about.

Perhaps you see things I don't, but I wonder, in the public interest, whether the public should not have access to the information which is in the hands of the minister. You said that an airline could lose its licence, and that's a completely different decision. Are you telling me that my idea would endanger the entire system?

• (1755)

Mr. Franz Reinhardt: No, but as you know, the Access to Information Act has been around for a long time. When people ask us for information on a company, under section 20 we have to consult that company. If the matter involves financial information or proprietary information, it is protected. This is information which the minister would not disclose.

In the case of Jetsgo, for example, the bad financial situation of the company was revealed at the same time as the company ceased its operations. It was not the minister's responsibility to disclose the privileged information. We had information concerning security, so we did something about it. We did everything we could in that area. We were not shy about doing what we had to do and about justifying what we had done given the information we had.

Mr. Mario Laframboise: But a company may lose its licence for safety reasons. Aren't you afraid that this bill would prevent you from revealing that kind of information?

Mr. Franz Reinhardt: Absolutely not. We can use the information. Information can be made public, and in cases which end up before the courts, the information is revealed in the course of the trial. It is not necessary to make information public before a case is heard in court.

No, absolutely nothing is missing; we have everything we need.

Mr. Mario Laframboise: Mr. Chairman, I am a great democrat. If my colleagues don't agree with our proposed amendment, I do not mind withdrawing it. However, I am still concerned about the powers given to the minister.

[English]

(Amendment withdrawn)

The Chair: Thank you, Mr. Laframboise.

We'll move to amendment NDP-8.3.

Mr. Julian.

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

I think this is certainly a minimum requirement. As we've had this discussion, I've become more and more concerned about the provisions in this clause of the bill.

I was just finishing up my questions when you raised the issue of moving on to Mr. Jean's motion. So I'm going to finish up a couple of questions regarding the shape of that proposed section and then come on to the—

The Chair: Mr. Jean, on a point of order.

Mr. Brian Jean: We're no longer on that particular amendment. It's been withdrawn. So is he moving NDP-9 or—

Mr. Peter Julian: Yes.

The Chair: We are moving NDP-8.3, and I'd ask Mr. Julian to speak on the motion, please.

Mr. Peter Julian: In the interests of time, I'll be raising concerns that I think are encompassed both by NDP-8.3 and NDP-9, and that is the issue of the secrecy and the issue of the “get out of jail free” card.

Coming back to the fact that disclosure of information obtained through the SMS cannot be used against the company itself, I'm also concerned what that would mean. You mentioned, Mr. Reinhardt, that in a situation where a company wasn't complying, essentially that mechanic who had seen that non-compliance on a repeated basis could then go to Transport Canada. He's no longer protected because he's acting outside the SMS process. Am I not correct, if we look at G-3?

Mr. Franz Reinhardt: No, the mechanic who will report internally, as you know, is protected—

Mr. Peter Julian: Yes, but the company hasn't acted and you specifically said that if that mechanic—

Mr. Franz Reinhardt: He's still protected if he has used the internal reporting process at the beginning before going public in the newspaper, because he wants his name in the newspaper. He's protected. If he goes through the system, he's protected even when he goes to Transport, but he has to go through the system first.

We want to avoid those disgruntled employees who want their names in the newspaper reporting directly to reporters before going to the company, which would be counterproductive.

Mr. Peter Julian: Where is he protected?

Mr. Franz Reinhardt: If you read the—

The Chair: Mr. Volpe, on a point of order.

Hon. Joseph Volpe: I too have been most interested in hearing all the debate. We are now on amendment NDP-8.3. I hear references to amendment G-3, which I understand is not on the table, because that's what you ruled 40 minutes ago when I asked you to address it.

The question here is whether we would accept that the amendment be that the information required be disclosed under an act of Parliament. So I'm going to make Mr. Julian the happiest man in the world. I can't speak for any other member around the table, but I'm all for disclosure under an act of Parliament.

Would you please advise Mr. Julian and all other members who are interested in accessing information under an act of Parliament that at least the member of Parliament for Eglinton—Lawrence says yes, no need to discuss it further.

• (1800)

The Chair: There seems to be consensus, Mr. Julian. Do you want to—

Mr. Peter Julian: Thank you, Mr. Chair, and I appreciate Mr. Volpe's intervention, but I still want to get an answer to this question, because it is something that has come up subsequent to the debate, and I don't see the protection.

The Chair: But the relevance is, Mr. Julian, an amended motion to the committee, not discussing G-3. Your amendment is dealing directly with page 15, paragraph (d).

Mr. Peter Julian: Well, then—

The Chair: You're trying to sell that amendment to us, not necessarily to ask questions, I believe. It may come back to you.

Mr. Peter Julian: The issue itself will come up later, so I will follow Mr. Volpe's advice and come back to that line of questioning later, when it's appropriate.

As far as the disclosure under an act of Parliament is concerned, that provides an additional element of disclosure of information that should be in the public domain, and we may find through the functioning of this bill that it must be in the public domain in the case where there is safety information that's a matter of public importance.

So on that, I move my amendment.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, is it the case that the committee is indeed in charge of its own destiny?

The Chair: It is.

Mr. Brian Jean: When an issue is debated, may a motion be moved?

The Chair: Yes.

Mr. Brian Jean: I would move a motion at this time, Mr. Chair, that we indeed table the existing amendment, move to new amendment G-3, and limit the debate on G-3 to two minutes per party.

I'll actually take off the two-minute issue and ask that we move straight to amendment G-3.

Hon. Mauril Bélanger: On a point of order, Mr. Chairman—

The Chair: I will address it because NDP-8.3 is on the table.

Hon. Mauril Bélanger: Thank you.

The Chair: You're asking for a tabling and not necessarily a motion.

We have NDP-8.3 on the floor. Is there any more debate on it, or can we move on the question?

Mr. Bell.

Mr. Don Bell: I want to clarify this. If NDP-8.3 creates a paragraph (d), I go back to my question. Am I correct in understanding that the “or” in paragraph (b) would be moved down to (c)?

The Chair: Yes, absolutely.

Amendment NDP-8.3 is on the floor. All those in favour of the motion?

Mr. Jean.

Mr. Brian Jean: We haven't closed the discussion. I haven't had an opportunity to address NDP-8.3. I'd like to hear from the department as to what their position is on NDP-8.3.

The Chair: Mr. Reinhardt.

Mr. Franz Reinhardt: Yes. The impact of going ahead with NDP-8.3 is to allow access to information to apply, because that act of Parliament is access to information. It has exactly the same result as the others, and you have voted against the first one. I think this is of utmost importance.

No. You have withdrawn it, with all due respect, and I appreciate that.

But this one amounts to saying that access to information will apply.

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger: For clarification, Mr. Chairman, as prescribed in the bill we're dealing with, if the bill we're dealing with has certain restrictions, they will be maintained, won't they?

Mr. Franz Reinhardt: The way it is spelled out now, the information is required to be disclosed under an act of Parliament. Access to information being an act of Parliament, the information will be required to be disclosed. This is usually the form used by ATIP to allow the application of ATIP on all the other legislation, except where there is specific protection. It's why we have to be very careful.

Hon. Mauril Bélanger: But you have specific references in this case, in Bill C-6, which will become the Aeronautics Act. Perhaps we could have an answer from Justice.

Mr. Franz Reinhardt: I don't understand your question, Mr. Bélanger.

Hon. Mauril Bélanger: Perhaps I don't understand what you're saying. Are you saying that if such an amendment is adopted for whatever restrictions might be contained in Bill C-6, the Aeronautics Act would therefore not apply and all the information must be divulged?

•(1805)

Mr. Franz Reinhardt: Let's say we give the protection under ATIP, and at the same time you say the information is required to be disclosed under another act of Parliament. It would say ATIP will allow the release, but on the other hand, you're putting in protection under schedule 2. It would be contradictory.

Susan, am I correct?

The Chair: Mr. Volpe.

Hon. Joseph Volpe: Thank you, Mr. Chair.

The kind of response we're getting now brings me back to 45 minutes ago, when I had asked for all of those items to be grouped so that we could deal with them in a fashion that would make a certain amount of procedural sense.

In my view at the time—and I'm sorry to be repetitive—amendment G-3 provided us with an opportunity to discuss the substance and direction of this entire proposed section. While on basic principle people couldn't agree with my previous intervention, as I made it, what we're being told now is that we could be contradicting ourselves as we go forward. So the discussion that we might have, for example, on a subsequent amendment G-3 might compel us to come back to revisit this particular issue.

If that's what I hear Mr. Reinhardt say, then I think the legislative clerk and the clerk might want to help us make a decision as to whether we should group the balance of these amendments, which would have been considered with amendment BQ-16, as the most appropriate way to deal with these matters. Otherwise, we'll be reviewing philosophical positions on every single amendment. When they're isolated, they all make sense, but these are all grouped together in order for us to come to a final understanding of a particular clause—not the bill itself, but a particular clause under the bill.

I'd ask you to consult with your legislative clerk and clerk to see whether you can help committee members around the table fulfil their democratic obligations by doing this in a procedurally correct fashion that will bring us to a decision that will not contradict another decision.

The Chair: Thank you, Mr. Volpe.

I think what you're asking me is whether there is a willingness to forgo NDP amendments 8.3 and 9 and to deal with G-3.

Hon. Joseph Volpe: I don't think there's going to be a unanimous willingness, but I'm asking you to look to the advice of the legislative clerk and the clerk about how to best proceed with these issues. In my view, they would have been dealt with together, as we have done with other groupings; these five items should have been grouped together so that we could have made all the points my colleagues from the other two parties have made so far and that the government in fact has made. Rather than repeat ourselves on issues that are similar or consequential, we should deal with them as one.

The best way to have started—I made a proposal—would have been amendment G-3. But now we're moving from items that are withdrawn or going to be changed, and then going back to amendment G-3 to reverse ourselves on an item, such as that, as Mr. Reinhardt says, “an act of Parliament” means ATIP. It doesn't mean “an” act of Parliament, meaning whichever one someone wants to choose. Quite frankly, that's problematic from the standpoint of a rational approach to making amendments to this bill.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, I'd like to move that we stand amendments NDP-8.3 and NDP-9 and proceed with amendment G-3 as presented today.

Hon. Joseph Volpe: I second it.

An hon. member: You don't want to hear someone talk about their stand?

Hon. Mauril Bélanger: No, that's not the point. The point is that there's a logic here.

The Chair: There's been a motion put on the floor to stand NDP amendments 8.3 and 9 and to deal with amendment G-3 as presented today.

It is subject to debate.

Mr. Julian.

Mr. Peter Julian: I'm fine with that, Mr. Chair.

The Chair: All those in favour of the motion please signify.

(Amendment allowed to stand)

• (1810)

The Chair: We'll move to amendment G-3.

Mr. Jean.

It's pretty straightforward.

Mr. Brian Jean: It's a great motion. Thank you.

The Chair: I think everyone has seen this. Does anybody have any comment on amendment G-3?

Do we have it in French and English?

Hon. Joseph Volpe: We have it in French.

The Chair: Do we have this motion *en français*?

It is clause 12 on page 15. And on your separate sheet, it's proposed subsections (3) and (4). I just want to make sure everybody has it.

[Translation]

Mr. Mario Laframboise: Is this it?

[English]

The Chair: *Oui*? Okay.

Is there any debate? Mr. Julian.

Mr. Peter Julian: I want to come back to this issue of protection for the employee who reports outside of SMS. That was the question I had asked you earlier, Mr. Reinhardt.

Mr. Franz Reinhardt: Yes.

Mr. Peter Julian: I'd like to ask it again now that the issue is here with amendment G-3. What is the protection for the employee who reports through SMS and doesn't see resolution, doesn't see the company doing anything about it, and then reports publicly or goes to Transport Canada?

Mr. Franz Reinhardt: As I told you, we want to make sure the employees use the system first, and that if they do report to the employer, they are protected under proposed subsection (4) here. If they do report a first time, hopefully it will work, the corrective measures will be taken, and everybody will be satisfied. If they're not

and then they decide to come to Transport and report again, reprisals cannot be taken against those individuals, because they have used the system.

Mr. Peter Julian: But can you give me the specific wording that protects them? I don't see it in amendment G-3.

Mr. Franz Reinhardt: It says:

The holder of a Canadian aviation document shall not take any reprisal, including any measure that adversely affects the employee's employment or working conditions, against any employee of the holder for the reason only that the employee disclosed in good faith under a process referred to in subsection (1) information regarding alleged actions or omissions of another person.

Mr. Peter Julian: That's within SMS.

Mr. Franz Reinhardt: Correct.

Mr. Peter Julian: If that person steps outside SMS...perhaps it's contained elsewhere in the bill, but—

Mr. Franz Reinhardt: If they have already reported it under SMS, Mr. Julian, they have the protection. Our interpretation is that if they report through the SMS to their company, they are protected. It says that if the individual reports again to Transport about something, the same protection applies.

Reprisals cannot be taken against an employee who has reported through the system.

Mr. Peter Julian: I'm sorry, I don't see it.

Mr. Franz Reinhardt: You don't see it clearly enough?

Mr. Peter Julian: I don't. It's definitely not here. It may be elsewhere, and perhaps that's what you're referring to, but it's definitely not here.

Mr. Franz Reinhardt: You're saying that the way it reads, it limits the protection to the internal reporting?

Mr. Peter Julian: It limits it to the reporting that they have done internally. That is very clear, and it's effectively worded, but I don't see the protection for the individual who then has to step outside of the system because the company is not taking action.

Perhaps Ms. Stanfield can help us. I don't see it.

Mr. Franz Reinhardt: We're willing to consider.... Of course, we drafted this to ensure that people report through the system first. We don't want people to go elsewhere. If they report through the system first, they are protected.

I don't know if there is another way of wording it, but they have to report through the system first. If they don't report through the system, that would encourage disgruntled employees to go directly to a public place or to the media to say, as we saw not long ago, things that are unfounded. So they need to report through the system first.

Is the way it's drafted there sufficient? We thought it was sufficient. Is there a way of maybe amending it? I don't know.

The Chair: Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: It seems acceptable at first glance, but I am wondering whether it might not have repercussions on other amendments which have been tabled by either ourselves or by other members. For example, BQ-19 will be presented a bit later on.

• (1815)

[*English*]

Mr. Franz Reinhardt: This one was meant to cover all the proposed whistle-blower protection. This one could encompass all the others. This one is considered sufficient to address—

[*Translation*]

Mr. Mario Laframboise: If this was adopted, amendment BQ-19 would have to be withdrawn. Is that what you mean?

[*English*]

Mr. Franz Reinhardt: Yes.

[*Translation*]

Mr. Mario Laframboise: I have to analyze that.

[*English*]

Mr. Franz Reinhardt: We have to be honest and look at all the things that are similar together.

The Chair: Just for information, am I to understand that your intent is to cover off all the other amendments?

Mr. Franz Reinhardt: That's right.

The Chair: That doesn't necessarily give me complete assurance that you have, or that you've satisfied the other members with it. As we move forward, we'll have more information after we review this and see how it impacts the rest of the bill.

[*Translation*]

Mr. Mario Laframboise: I have to know, Mr. Chairman. I don't want to put other amendments at risk by voting on this one. I could try to table an amendment, since the committee seems open to the idea of adopting an article which addresses our concerns. Do you understand?

[*English*]

The Chair: It's very difficult to accept this amendment with the intent of covering off all the other concerns, but without a chance to review it, we really can't make a comment from this position.

Go ahead, Mr. Bélanger.

Hon. Mauril Bélanger: If I may reminisce for a moment—and it'll be a short moment—twice this committee has come to a similar situation, once on the bill and once on another issue, and twice the committee sought to perhaps suspend deliberations to allow others to have a go at this and take a look. Perhaps we've come to another such moment.

The Chair: I think we have. I would suggest that we stop here for today. I don't think we can defer it and move forward, because we're going to be coming back and forth.

I would suggest that the department sit down with the people who have presented amendments that go forward from this point and try to come to some conclusion as to whether it satisfies the intent of their amendments so that we can deal with it at the next meeting.

The fact is that this is an all-encompassing amendment, and it may impact all the amendments throughout.

Mr. Franz Reinhardt: We always offer to give explanation to any member of the committee to make sure there's a good understanding. We're always available to discuss, if need be.

The Chair: I understand. I can't make anybody sit down, but it would certainly make the committee run far more smoothly if we made an attempt to at least cover off what we've done today and what we're looking at in the future amendments.

Go ahead, Mr. Volpe.

Hon. Joseph Volpe: Mr. Chairman, I'm wondering whether other members would agree to what I've suggested on two other occasions so far, which is that some of these be grouped as being similar. The only way we can do that is if we can have somebody with some expertise address these from a procedural point of view. From the point of view of intention, which is what I thought I heard you say, I don't think you're ever going to get any consensus. I don't know what everybody else's intention might be on a clause-by-clause basis. I'm not sure that they would reflect my own.

I'm for making a decision that says let's come to a point where we can agree on what it is that we're voting on. I've read all of the amendments. In my own mind, I've already made a decision on which ones could be grouped, and in fact, that's how I've dealt with them for myself. Everyone has his or her own approach, but we are constantly referring back to either the department or to the chair to help us through a particular amendment.

While that's helpful from a legislator's perspective, what is much more efficient from the perspective of the responsibility of a legislator is that we reach a decision that will be useful and productive as quickly as possible. I say this not out of naïveté or out of feigned concern, but out of genuine interest that if Bill C-6 is a piece of legislation that is intended for the public good and safety, then all of its articles and amendments be considered in that light. I can't think of a more counterproductive use of a legislator's time than to constantly waiver on whether these amendments or these clauses fit the general definition of the responsibility of a legislator on this item.

If it is not the wish of the committee to deal with Bill C-6, fine. But then it will be dealt with on an item-by-item basis. So would you please—and maybe other members will disagree—over the course of the next 24 hours have your legislative clerk and your clerk group these for us? All members around the table have the same information as I have. I'm not sure we need you to hold our hands, but at least if you group them, we'll be able to deal with these as a large item. We all know what we want out of these amendments.

Without sounding like I'm really upset, we can have a more productive use of another hour and a half of time than we did in the last one. And everybody has a right. I think Mr. Laframboise said it properly: we all have our democratic rights that need to be respected. But along with democratic rights, this is a responsibility for all of us to be germane in our discussions on the clause-by-clause.

• (1820)

The Chair: Thank you, Mr. Volpe, and I can assure you that clause 12 obviously is creating its issues. We have them all grouped as far as when they're presented is concerned. We can make that comment on which one is in conflict with another. Once we get through clause 12, I would suggest that it's going to be a lot easier to discuss. The very fact that this amendment was brought forward today with no consultation to the front table officers does create a bit of a problem when we're trying to give advice to the rest of the membership as to where there's conflict and where there isn't.

Hon. Joseph Volpe: Well, there was, you're absolutely right. And I'll defer to Mr. Bélanger's statements on this, but the more we talk, the more some things get refined.

I have to disagree that there wasn't consultation. We had a reform to G-3 last week, and the government worked on it some more. I'm not going to give them any credit yet, because we haven't voted on it, but certainly we have three variations of G-3. The latest one, the one that was presented today, will be considered on its own merits.

I think all of us already knew what G-3 was. The government has gone to G-3 one and G-3 two, so we all know the context and we know the arguments that led to that discussion. I think for us to delay making decisions on some of these amendments because we want to deal with each one of them individually, when some of us are going to be asking you....

You're eventually going to have to make a decision, Mr. Chair, about whether these have a sequential impact on another amendment or, preceding that amendment, cause us to reflect in consequence—as we did, for example, with BQ-16, when Mr. Laframboise, after some debate, said he would withdraw it. I thanked him for that, as I think most members did. It was a genuine response. But I thought I read in that response....

You know, if you had told me earlier on that we were grouping some of these things together, I could have made my arguments more cogently against the central amendment that would have had an impact on my own amendment. And that's all I'm asking.

The Chair: Monsieur Bélanger.

[*Translation*]

Hon. Mauril Bélanger: Mr. Chairman, if you give me a minute, I would like to express a wish. I don't know if it can be fulfilled. I

mentioned this earlier to the officials and I also mentioned it to you. I find the structure of the bill and the bill itself cumbersome.

Just look at section 5.3, which contains designated organizations, management systems, flight data analysis agreements, voluntary reporting, and other things. It goes all the way up to section 5.3901 and that's not the end of it. It's very confusing. The same section, or subsection, contains so many subjects that they should be separated to clarify things. Would it be possible—I don't think so, but perhaps the committee should ask for it—to reorganize the bill in order to make it more clear?

I understand that we are working from the structure of the former bill, or of a law which goes back 15 years, but when a piece of legislation is thoroughly reviewed, I think we should also think about reviewing its structure.

• (1825)

[*English*]

The Chair: Thank you.

Any other comment? Mr. Julian.

Mr. Peter Julian: I think you're doing a good job, Mr. Chair, in difficult circumstances.

The Chair: Well, thank you very much. That means a lot.

Mr. Jean.

Mr. Brian Jean: My motion is on the table.

The Chair: Yes. We have five minutes, and I'm going to go to that.

Mr. Brian Jean: I was just going to mention that I'm prepared to move that to the meeting on Wednesday.

The Chair: Wonderful.

Again, I want to advise the committee that if you have concerns about your amendments, please contact the department. I would ask the department to be available so that we can get the answers we need.

Is there a will to extend another hour on Wednesday? It is a motion, but we did it today without one. I'm asking if there is a will again for Wednesday.

Hon. Joseph Volpe: There probably isn't going to be a need for a motion. We have all the will in the world to sit down and get it done.

The Chair: All right.

This meeting is adjourned until Wednesday at 3:30.

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