



House of Commons  
CANADA

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

---

TRAN • NUMBER 014 • 2nd SESSION • 39th PARLIAMENT

---

**EVIDENCE**

**Thursday, February 28, 2008**

—  
**Chair**

**Mr. Mervin Tweed**

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

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

## Standing Committee on Transport, Infrastructure and Communities

Thursday, February 28, 2008

•(1110)

[English]

**The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):** Good morning, everyone. Welcome to today's meeting.

This is meeting 14 of the Standing Committee on Transport, Infrastructure and Communities. I apologize for starting a few minutes late.

We've set aside the first 15 minutes to do some committee business, and I have a little bit of a list here. We'll maybe go through it, and then if there are other comments, we can add to it.

The subcommittee met and made a proposal that we actually do the study on navigable waters. But as a collective group, we needed to bring that back to the committee as a whole for approval. I put that out there as the first thing we have to do. So I would ask the committee as a whole if there are any comments on the subcommittee's report.

It was agreed that officials from Transport Canada would appear today with respect to navigable waters, and it was also agreed that we would invite the Minister of Transport to appear before the committee with respect to supplementary estimates B. I can give the committee an update on that. The minister is, at this point, unavailable to attend, but I can advise the committee that the main estimates of the government are to be tabled no later than March 1, which would be today or tomorrow. And then the committee will have until May 31 to study them. I would hope that the minister would make himself available to appear before the committee to discuss the main estimates.

Are there any comments?

Go ahead, Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Very quickly, I wanted to make sure, after Mr. Masse commented last time.... My understanding is, and I've been informed, that first of all, it's less than \$3 million. The estimate is a rounding up. The \$3 million is actually a rounding error. That's what your questions are going to be centred on. Three million dollars, in the overall budget, although it's a lot of money to taxpayers, is not a very large amount. And quite frankly, it's not additional funds for any specific project or a change in the government's agenda. It's simply a rounding error. That was my understanding.

**The Chair:** We'll go to Mr. Masse.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair.

I am glad the government has finally admitted that it's not perfect. It took two years. Nevertheless, it's a start.

I'm comfortable with that if we have time for the main estimates, but I will retable my motion, just so I'm not differing from what we agreed at subcommittee we were going to do up until the recess. I will retable my motion so it'll be on the table for consideration when we come back from the recess.

Thank you.

**Mr. Brian Jean:** I have a point of clarification, Mr. Chair. I never said we weren't perfect. I just want to make sure that's on the record.

**The Chair:** I think this is where the chair says that's debate, not a point.

With the agreement of the committee, I will ask that we approve the subcommittee's agenda, and that way it will allow us to proceed today.

**Some hon. members:** Agreed.

**The Chair:** Thank you. The subcommittee's recommendations have been accepted by the committee.

I just wanted to let you know, too, that the guidance document provided by Mr. Grégoire on February 12 has been distributed to us. They modified page 3, which deals with applications received and approved from 1999 to 2007. I just want to make sure you have that in your packets.

Mr. Jean.

**Mr. Brian Jean:** Thanks, Mr. Chair.

I'm sorry, I wasn't trying to steal the thunder, but I wanted to make sure I dealt with some issues.

I'm worried about the agenda. We've been very successful as a committee, and I'm just worried we're running out of things to do. I'd like to propose at the earliest possible time, which is right now, a list of some of the witnesses that we might hear here in Ottawa before we get on the road, if indeed that's possible. I thought I would propose a list that I was going through this morning.

I did have a chance actually to look at the information provided by the department, and quite frankly, I found it very helpful. There was a study of five or six different jurisdictions around the country. If you haven't had a chance to read it.... It really gave me a good synopsis of what's happening in the rest of the world and what our problems are here.

For some of the witnesses, I was going to propose that we start off with the departments, because I think they would be most readily available and easiest to get to. I thought, subject of course to any greater wisdom than mine, that we would have to talk to DFO, Natural Resources, Environment Canada, and indeed Infrastructure, because of course it is a separate department. Those are the ones that I saw as most seriously connected to navigable waterways as far as what's taking place with them.

And then I also thought, at the same time, while we're listening to those witnesses, we could send out an invitation to all the provinces. I know that Alberta would like to have some input. I believe that Quebec would as well, because of some issues that are going on there, and I know Ontario would. As well, I thought that the FCM would be a good witness to bring forward, because it deals with the bigger municipalities, as well as the smaller provincial municipality organizations such as SARM, AMM, and AMO in Ontario.

Those were some of the ideas that I had, but certainly I'd like to banter it around as much as anybody wants. I thought what we could do is listen to more or less the organizations, the governments, and the departments here at this level, and then when we go around the country, if that is indeed possible, we can get input from stakeholders on the ground that aren't really department- or government-organized.

**The Chair:** Mr. Masse.

**Mr. Brian Masse:** My recollection from the subcommittee meeting was that we weren't going to go that far down the path and look at travel and so forth. We were going to do a review and then get a proposal back to us, because I do have a motion that I actually think is important committee business that needs to be considered, especially if we're now going another step.

My interpretation of our subcommittee resolution was not that we would start getting travel and so forth going prior to getting a report back.

• (1115)

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** What I was suggesting at this stage.... I just knew that it's going to take a couple of weeks to organize everything, as far as any travel that's going to be done or as far as our agenda. In the meantime—and I'm not saying whether we do it or don't do it, as I think it's obviously up to all the parties' whips and whether or not we're in a situation of confidence votes or whatever the case is—we're running out of an agenda here. So my thought is just to move forward on these that we can do at this stage and that we know are important and then go on to the other.

**The Chair:** Just before I recognize Monsieur Laframboise, I know we sent a letter to the department asking them basically to identify the low-hanging fruit and how we could move. I think that there's some reluctance to do that, simply because it may change the way we're looking at things and I don't think we want that to happen.

I think we want to take a hard look at this and make our recommendations as opposed to just accepting what the department.... I know the discussion at the subcommittee was to make it happen so things could happen faster, but I think there's probably some concern that the department doesn't want to be seen as leading

this recommendation as opposed to accepting the recommendations of the committee.

Mr. Masse, I do have Mr. Laframboise, but did you want—

**Mr. Brian Masse:** I'll wait in line.

**The Chair:** I just want to ask this. By tabling your document again today, did you want that to become an item to be discussed today before we move on?

**Mr. Brian Masse:** Yes, I do. I was waiting to hold that back, but now it sounds like we have a different set of circumstances today from when we had at our subcommittee meeting, and I wasn't aware of that. We also have the rail study as well. So now I think we perhaps need to have another subcommittee meeting or something to discuss about future committee business if we're going to be departing from what was agreed upon in the subcommittee.

I don't think we're running out of—I mean, we may right now be running out of things to do officially, in terms of having no bills in front of us and so forth. I'm offering something. I know I'm getting a lot of calls and letters of support to have the motion that I've prepared examined, and amended, if my colleagues have improvements to it, and I see that as a greater priority than the Navigable Waters Protection Act.

**The Chair:** Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Mr. Chair, according to what I understood from the subcommittee's discussions, we asked Mr. Masse not to withdraw his motion and to present it again when we were in a better position to discuss it. But there is one urgent matter: the discussion on navigable waters. Are we going to decide to deal with the question in Ottawa and summon witnesses? We could discuss it after having asked the department some questions.

I am hoping that my colleagues agree with me that the navigable waters file is so important that we will be able to deal with it as quickly as possible. If amendments can be made quickly, let us make them. As you said, this is about the low-hanging fruit. Then we can go on our tour of Canada.

Mr. Masse's file is important, but if we tour Canada, we will be able to use the occasion to deal with matters other than the one that Mr. Masse has tabled. I do not want him to change the agenda today. Let us deal with the navigable waters, and then we can deal with his motion. That is what I want him to do. If he wants to present his motion right away, I will vote against it and that will be that. It will depend on what the government decides. If it wants to work with us, let us deal with the navigable waters matter and then we can make a decision about our tour of Canada.

[*English*]

**The Chair:** Mr. Volpe.

**Hon. Joseph Volpe (Eglinton—Lawrence, Lib.):** Well, Mr. Chair, I don't want to engage in this particular debate, other than, as Mr. Jean said a few moments ago, we're running out of things to do. We're not. I just want to clarify that, because we rely on the government to do something, some initiative, and we respond to the initiatives that come before the House, unless we generate some of our own.

I think there are a couple of things still in the House that were left in abeyance. Now that the rhetoric about a potential election seems to have quieted, at least momentarily, I'm going to ask Mr. Jean whether, for example, the Pilotage Act is coming back, whether Bill C-14 is coming back, and given that the minister has made several announcements regarding infrastructure—and this committee is part of the infrastructure portfolio of the minister—whether we are going to be looking at any issues that relate to some of his announcements, specifically one that relates to Mr. Masse's motion, for example, the investments and transport capacities and security issues, bridges, etc. Do we in fact have an opportunity to go deeper into the issues related to transport?

The minister has made several announcements regarding automobiles and the efficiency standards associated with fuel consumption. All of these are part and parcel of the mandate of the minister. He's not just a transport minister, he's the minister for several other things. I'm just wondering whether he'd give us an indication of the directions we're going to pursue over the course of the next little while, given that we're just anxious to do more than what is normally asked of us, to ensure that the government functions in a capacity that would make Canadians feel comfortable that they eschewed the opportunity to go to an election.

● (1120)

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** First of all, I want to say that I think the reality is two things. The first is that I think this committee is working very efficiently and pushing through a lot of legislation and being successful. That's one of the reasons that we are well ahead of expectation. That might be as a result of this Conservative government's being so efficient—I'm not sure on that, Mr. Volpe.

But all that election rhetoric aside, I think the long and the fast is that on Mr. Masse's motion.... I think navigable waterways is critical to the motion, and I would argue that. I'd like to talk about the \$33 billion we've allocated that is going to be rolled out soon. That money, as you know.... The application for navigable waterways is directly connected to just about all infrastructure in this country. One way or the other, any road that's going to be built is going to go across water or is going to in some way be impeded by water or involved with it.

I think the most important thing we can do.... I know that with Mr. Masse's motion, if we go to these things.... If I were in one of those cities and listening to people, I know what I would hear and I know what I would say. I would say, "Give me money, give me money, give me money."

Well, money is not the answer. What we're suggesting as a government is to say here's part of the problem, and here's something we can fix. Here's something we can work on as a committee before the \$33 billion starts to be rolled out in big numbers.

There is an eleven-month average wait for a navigable waterway application. So this is something that holds up a lot of investment in the country and a lot of efficiency in the country, and here's something, before we get too close to throwing the \$33 billion wherever it may be invested across the country.... And you know, the \$130 billion that we have as a deficit now in infrastructure across this country.... Here's an opportunity to speed up the process and to

do something that Canadians are going to see good results on. That's why I think this is so important.

In terms of our agenda on the other items that you've asked about, Mr. Volpe, it's really beyond my pay grade. I don't know what's happening with those particular pieces of legislation at this stage. I know that we did our work on it, and I'm not sure when it would be coming back or whether it's a priority of the government.

But I would agree with Mr. Laframboise. I think the major priority for this committee at this stage is navigable waterways, because it's so directly connected to infrastructure investment across the country. It's an issue of a 130-year piece of legislation that needs to be updated. And maybe, just maybe, we could get consensus among this group, which I think we can, with some basic changes that are going to get us really good results.

To point directly to Mr. Masse's constituency, I think it's absolutely critical to solve the issues with navigable waterways in order to speed up the process and be more efficient. I really think it's important.

Did that answer all of your questions, Mr. Volpe?

**Hon. Joseph Volpe:** No, but at the risk of sounding a little bit too concise, I'm going to reflect on the issue that we discussed when we met as a steering committee, and that was that yes, we were going to go ahead with navigable waterways after we had listened to the department, and that we would make an additional decision on the extent to which we would engage the time and energy of this committee.

So I'm still in that vein. I'm not suggesting that we don't do it. I'm simply looking at where we would go from there. You're asking me to speculate on what's going to happen after we listen to the department today and what kind of timetable we'd put forward. Because you asked me to speculate, I've responded by saying that we have other issues on the table that we can now address, simply because it appears that we are going to be afforded the time to do some valuable work.

● (1125)

**Mr. Brian Jean:** I would like to respond, if I may, because I didn't answer one of his questions, and actually a comment made earlier. Mr. Bell is here now.

My understanding is that before Easter, the railway review will be tabled. So I think that's the other thing—we have maybe two weeks in which we can deal with navigable waterways, and then I would suggest that after we've had probably a week to review that when we receive it, you know there are going to be other questions. It may be possible that the committee will say we have to put navigable waterways aside for a little while, and now let's concentrate on the rail study.

That's the sense of urgency that I have. I know we have some things coming back. We may have that legislation that you speak of next week or the week after that. I would just like to fill our agenda, because we have at least next week where we could fill our agenda and certainly get correspondence out to the provinces, and we could find out who wants to make a submission. Maybe they want to make it in writing or in person. That way we can keep the agenda going for at least two weeks, and then probably the rail study might be part of the agenda, or indeed some of the legislation that you've suggested or something of an emergency nature that would come up.

**Hon. Joseph Volpe:** I don't think we have a problem with that except for one thing. I'm sorry I didn't see Mr. Masse's hand up. I wouldn't like to see the inventory of witnesses and potential respondents to potential questions then dictating where we will go from there.

So we've agreed that we'll do the navigable waterways for the next couple, but building up, as I say, a vast reservoir of potential witnesses on this thing is not going to dictate whether we continue going beyond one or two weeks of discussion.

**The Chair:** I think that's a fair comment. I know that Mr. Bell has been waiting patiently for the rail report, and I think we've decided as a committee that when that comes forward we would like to finalize our report.

I have Mr. Masse, and I presume you would like to present your motion.

**Mr. Brian Masse:** I can wait for further discussion on the motion, but I'm a little bit concerned, and I only tabled it now because there is a difference between what was agreed upon in the subcommittee and what we have today. It is a departure from what had happened there, and I will table these as well for the committee members.

I'm concerned about how far we go down this line and whether we're going to be looking at a review of the Navigable Waters Protection Act. I'm not opposed. I support doing some work on that, but I have already from my motion the groups that are supporting or writing to me about that. I have the national union of transportation workers, the Hotel Association, the Canadian Trucking Alliance, Chrysler, the Auto Parts Manufacturers' Association. We have the Canadian Vehicle Manufacturers' Association, the Canadian/American Border Trade Alliance, Teamsters Canada, the Canadian Meat Council, CAW, as well as Bombardier and the Canadian Chamber of Commerce. The scope of what we can potentially do is important to the productivity issues.

I'm open to amending the motion. I'm open to spending time on the Navigable Waters Protection Act, but I'm a little bit concerned that we go full into this and then we depart on everything else that we can do as a committee.

I'm looking for compromise, but....

**The Chair:** I might just try to summarize it first.

I think what Mr. Jean has proposed is that after the agreement we reached earlier in this meeting, we would move forward with the study of navigable waters, with the idea that when the rail safety review comes back, as a subcommittee we'll make a decision on when and where we want to deal with that and address it.

As Mr. Volpe has said, if legislation comes forward, that may very well interrupt what we're doing as a committee to deal with those issues. I don't think anyone is saying we're not going to move away from navigable waters to deal with other issues that have either come before us or that will come in the future.

What I might suggest, Mr. Masse—and I know you've presented a large collection of people who are supporting your—

**Mr. Brian Masse:** It's just the idea of doing it. It is not at the expense of anything else. I'm not suggesting that.

**The Chair:** And that is understood. I think what we have to do, though, rather than having this discussion, is to bring it forward as a motion to deal with it, or leave it on the table and you can perhaps bring it forward as you bring everyone else onside to—

• (1130)

**Mr. Brian Masse:** I can leave it for today so we can move ahead, and then maybe we can meet and then go from there. I don't want to occupy the committee and go in a circle on it. If that's helpful, I'll leave it.

**The Chair:** Mr. Laframboise.

[*Translation*]

**Mr. Mario Laframboise:** No, that's fine.

[*English*]

**The Chair:** Okay.

Mr. Jean.

**Mr. Brian Jean:** Very quickly, I don't think we've departed from what we agreed to in the subcommittee, but I'm still in the same mind frame, and I don't know how we missed that.

I was going to suggest that since you have the motion anyway, you can bring it forward at any time, but once we've heard from the department, it might make it a little bit clearer as far as where we're going and what we should do. I certainly have not departed from what my intention was during the subcommittee. I just wanted to make that clear.

**The Chair:** Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Quickly, if I understand regarding the rail, then I would like, prior to receiving the study that was done for the minister, to get whatever summaries were put together and have them recirculated to us from our committee so that we can be up to speed and ready to roll on that when it comes, and we can start thinking about it.

**The Chair:** Absolutely.

**Mr. Don Bell:** Secondly, general infrastructure—which is one of our main mandates—is important. It is important to the municipalities. I don't know what the steering committee talked about in terms of establishing work on that, but we need to have a good discussion about that.

The third aspect relating to this motion is the issue of the gateways. As critic for the Pacific gateway, I am particularly interested in addressing what the infrastructure needs are so that we can assess that.

With the Asia-Pacific—and I would refer to that again specifically—we know that within 10 to 15 years China will either be the number one economy or tied for the number one economy in the world. We know that the opportunity for Canada lies in tapping that market—whether it is India, China, Korea, or Japan—through the Pacific gateway. We know that the U.S. is building up its ports to take advantage of that. We know that Shanghai has quadrupled the size of its ports to deal with its growing business, so the capacity is going to be there. If we don't rise to the occasion, they will bypass us.

There's already talk about another kind of canal to parallel the Panama Canal. There are South American ports. We can't afford to be left behind, so I'm interested in that.

I realize that's trade, but it's also the issue of what we're talking about: the transport provided for that, making sure we've got the adequate rail links, and the provision for trucking and road services that are needed to serve that.

The other aspect, of course, is airports and the ability to handle tourism, and the significance, to some degree, of not yet having achieved the approved destination status with China, which impacts on the volumes that would come through the airport.

**The Chair:** Okay.

I am hoping I have an understanding here for next week—Tuesday and Thursday—that we would send a request to the major departments that are going to be impacted by the navigable water, which would be DFO and probably Natural Resources. We'll let them know what we are doing as a committee and ask them to come and be prepared to respond and make a presentation on their role in dealing with navigable waters. Hopefully we can either glean some recommendations or make some recommendations to approve it.

Mr. Jean?

**Mr. Brian Jean:** It's not on the same point, Mr. Chair. I think that's pretty clear from my perspective.

**The Chair:** Okay, so any new business?

**Mr. Brian Jean:** I just wanted to pass on to the committee members that I made a speech yesterday to a marine association, and except for my jokes, the biggest applause was in relation to Bill C-23, our amendments, and the regulatory changes. They really believe that regulatory changes are absolutely critical, and it's probably the best reception I've received from any group thus far. They were very happy with what we've done with Bill C-23. I just wanted to pass that on to everybody. I forgot to do that earlier, but they were very, very pleased.

**The Chair:** Okay. I guess if we are passing out accolades, I will let the committee know that I received a personal phone call from the grain shippers to thank us for our speedy passage of Bill C-8. They were very pleased with that too.

It is good to see the committee receiving good news.

**Mr. Brian Jean:** The royal assent on Bill C-8 is this afternoon at 3:30, if anybody's interested.

**The Chair:** Okay. I think we've got that pretty much wrapped up. I guess we have to adjourn this meeting, or can we just move into it?

We've got our high-priced talent sitting at the back and ready to join us, I'm sure.

Thank you. We will now move on to the order that we just approved this morning, "The study of the current status of navigation protection of the Canadian waterways, including their governance, use and the operation of the current Navigable Waters Protection Act".

Joining us once again is Mr. Marc Grégoire, the assistant deputy minister of safety and security, and Mr. David Osbaldeston, the manager of the navigable waters protection program.

I guess you received the letter where we asked you to provide us with some of the low-hanging fruit, I think was the term, so we could improve this as quickly as possible.

Do you have an opening comment that you'd like to make, Mr. Grégoire?

•(1135)

**Mr. Marc Grégoire (Assistant Deputy Minister, Safety and Security, Department of Transport):** I have.

**The Chair:** Then I will ask you to proceed.

**Mr. Marc Grégoire:** Thank you very much. That will allow me to answer many questions and to lay the groundwork for your questions.

Good morning. Thank you for allowing us to return to the committee today and continue the discussion on possible amendments to the Navigable Waters Protection Act.

During our last discussion you requested additional information, which I believe has been distributed to members.

Has it been? We sent you a letter yesterday or two days ago. Does everybody have everything?

[*Translation*]

I would first like to touch on some of the information items that we have provided. The first item is the study on navigation protection in foreign jurisdictions. It is not an in-depth study, but rather a high-level overview of how works are constructed in navigable waters in other countries. It revealed that the Navigable Waters Protection Act is in fact not that different from similar legislation in other countries.

You have all received copies of the minor works brochures that were recently developed. The intent of these brochures is to reduce the regulatory burden on proponents by excluding from the act those minor works that are known to have no, or very little, impact on navigation. As the brochures were only implemented last year, in 2007, we have no quantitative data yet on their effectiveness. But it is estimated that they may ultimately result in a 25% reduction in the number of applications received.

[*English*]

We have provided a breakdown of the application numbers that were the cause of considerable discussion at our last appearance.

Finally, the most important item is a short list of items for consultation and for consideration in the act. This is the name I gave them. I can't call them "low-hanging fruit", because there's no such thing as low-hanging fruit for this act. These items, however, would provide some limited relief to proponents and to the department.

In your letter of February 15, you asked the minister what could reasonably be done to serve the needs of stakeholders, specifically with respect to the current definitions in the act. The revised proposal focuses on two key definitions in the act, namely the definition of "navigable waters" and the definition of "work". The intent of amending these definitions is to focus the application of the act upon those waters and those works where federal oversight provides the greatest value to Canadians.

In addition to the two definitions I've just mentioned, there are another five items we would like the committee to consider. Combined, these seven items represent what we believe to be the absolute minimum changes required to the act to benefit stakeholders.

I will now discuss each of them very briefly.

[Translation]

First, amending the definition of navigable waters to exclude minor waters and replacing it with the term "waters in Canada" as we had originally proposed does not solve any of the issues related to the term "navigable waters". Nonetheless, the amendment would benefit those wishing to construct works in minor waters and provide some workload relief to Transport Canada staff.

Second, amending the definition of work to explicitly exclude minor works will benefit or could benefit those wishing to construct minor works in navigable waters. Here again, we could anticipate some workload relief to applicants and to Transport Canada staff.

• (1140)

[English]

Subsection 5(2) of the act contains four named works. They are "bridge, boom, dam...[and] causeway". These four works were originally named, back in 1882, specifically in the act, as they completely blocked the waterway and thus were traditionally considered significant interferences to navigation. Today in 2008, this is not true any more.

The result of naming those four works specifically in the act removed departmental discretion in the review process applied to them. This review process is prescribed in the act and is considered unnecessary in many cases—a large number of cases, indeed.

There would be significant benefit for stakeholders in removing those four named works from the act, as the review process could then be tailored to impact the work on navigation. This proposal could result in a moderate reduction in the number of environmental assessments conducted by the department.

Next, current fines in the act range from \$500 to \$5,000 maximum. They no longer act as a real deterrent to non-compliance and they require updating.

[Translation]

Here is another suggestion. In May 2007, the international Maritime Organization adopted the Nairobi International Convention on the Removal of Wrecks, 2007. Given the large number of questions that members of the committee had about wrecks when we last appeared, we thought that it was important to bring this for the committee's consideration.

It is proposed that only the operational elements of the wreck removal convention be inserted into the act. It is also proposed that the mandatory insurance provisions of the convention be placed into the Marine Liabilities Act.

The removal provisions in the convention apply to vessels of any size, and, for that reason, they complement the limited removal provisions of the current act.

The convention provides additional tools for Transport Canada to undertake removal of derelict vessels in all regions of the country as Canada chose to opt into the territorial waters provision of the convention.

[English]

Next, the act currently does not contain explicit inspection powers. Inspection powers are required to ensure compliance with all provisions. Good examples of inspection powers can be found in other similar legislation—for example, in part 10 of the Canadian Environmental Protection Act, 1999, or the enforcement section of the International Bridges and Tunnels Act.

Finally, it is desirable for stakeholders and the department to have a five-year review clause in the amended act. It would provide for an opportunity to correct any deficiencies identified through implementation, especially in light of the fact that we may not have new protection legislation for some time to come.

[Translation]

On a last point, on the copy of our guidance document that we gave you, the explanation on the chart on page 3 has been amended. The description of the light blue bar has been amended to reflect requests received per calendar year. On the version you received, it mentioned the number of applications. It did not in fact deal with the number of applications, but with the total workload. We realized that this included all the requests or enquiries that had been made but that were not applications as such. The new table clarifies this point, as do the additional tables that we have provided you with today.

[English]

Thank you for putting so much attention toward the Navigable Waters Protection Act. We truly hope this committee will make recommendations to improve this legislation.

Thank you.

• (1145)

**The Chair:** Thank you.

Mr. Osbaldeston, any other comments?

**Mr. David Osbaldeston (Manager, Navigable Waters Protection Program, Department of Transport):** No.



**The Chair:** I just have one question before I'll go to the committee. On page 3, when you were talking about amending the definition of work to explicitly include minor works, the written word says "would", and the interpretation says "could".

**Mr. Marc Grégoire:** All of this is subject to what the committee will be recommending. You asked us for low-hanging fruit. There is no such thing as low-hanging fruit. However, according to the experts in the department, if you want to significantly improve the actual legislation, you look at the seven areas, you consult on those, you come back to us with recommendations, and then we could follow the normal process and go to cabinet and come back with legislative amendments.

**The Chair:** Okay.

Mr. Maloney.

**Mr. John Maloney (Welland, Lib.):** I'll start off with following up on the questions of our chair. We're still wrestling with words and definitions of words. You suggested that the definition of navigable water would exclude minor waters. What would a minor water be?

**Mr. Marc Grégoire:** We explained that at our last appearance. That's why we were suggesting that one way to get out of this discussion is to rename the act and not talk about navigable waters. But if we're only going to look at this actual act and if we're only looking at amending this act, the idea would be to define navigable water. Today it includes everything as defined in the act and by jurisprudence. So over the years the courts have made a number of decisions, and as David explained last time, it came out to virtually, if you have four inches of water or if you can float a canoe or a kayak on a piece of water of whatever length, this room for instance, it's navigable water according to the act. If you could come out with a recommendation to define it, to restrict it, in order to exclude waters like.... David also explained that if you want to navigate on the water you're going to have to portage every five minutes; you won't be able to navigate anywhere unless you spend your time on portage. Why not exclude this whole secondary piece of water?

**Mr. John Maloney:** What exactly is your suggestion, then?

**Mr. Marc Grégoire:** No, we have no suggestion.

**Mr. John Maloney:** You have no suggestion.

**Mr. Marc Grégoire:** We're just suggesting that if you consult on this, and if you're able to come up with a consensus on a definition that is far more restrictive than the one we have now, it would be extremely helpful.

**Mr. John Maloney:** So hopefully our stakeholders will be able to provide some comprehensive suggestions on what these definitions could be.

**Mr. Marc Grégoire:** It wouldn't necessarily be easy. Again, as we explained last time, you're going to have basically two camps of people here. You're going to have a camp of stakeholders who will want this definition to be extremely restrictive, and then you're going to have another camp of people who will want the contrary. You will have the environmentalists, who most probably would want it to be more restrictive than it is now, and you will have the proponents of projects, who would want to exclude as many waters as possible.

**The Chair:** I think the simple definition, if I understood correctly from the last meeting, was that if you can float a canoe on it, it's navigable water.

**Mr. Marc Grégoire:** That's the decision we have now, imposed by courts. But we think it's too restrictive.

**The Chair:** Right.

Sorry, Mr. Maloney.

**Mr. John Maloney:** Okay.

The same line of...or your response when you're dealing with the definition of "works" and "minor works" would be similar. There's nothing really to suggest, but leave it up to the stakeholders to suggest to us and we'll try to sort it out.

In your pamphlet—I'm just looking at the one on docks and boathouses—you do attempt to define what is a minor work. Is that in anticipation of this legislation passing?

**Mr. Marc Grégoire:** No. Except for the four works I have named, the act allows for some very limited flexibility through exemptions.

We're actually using, if you want, the exemption power specified in subsection 5(2) of the act to exclude some of the minor works. That's what we explain through all the pamphlets there.

The pamphlets are starting to be known now. We're already starting to see a small decrease in the number of requests, as you can see in the table. Hopefully in 2008 we will have a further reduction.

So this is done by exemption. It would be useful here to define minor works in the act and get rid of the four names. Today, if you have a golf course and there's a little creek on which you can navigate a canoe, and you want to build a bridge to cross between two fairways, you need a Navigable Waters Protection Act application. It's a bridge, and we can't exclude those four named works because the act gives no exemption power for those four.

If you could get rid of those four, that would be another excellent step toward improving the situation.

● (1150)

**Mr. John Maloney:** But a bridge, a boom, a dam, and a causeway are obviously significant works that would—

**Mr. Marc Grégoire:** Well, no, a bridge is not always a significant work. A bridge could be just a little bridge in the woods that you can just walk across or bike across.

**Mr. John Maloney:** A boom, a dam, and a causeway, then—would you consider that?

**Mr. Marc Grégoire:** A causeway, I presume, yes, but...

**Mr. David Osbaldeston:** If I may, there are varying degrees of bridges, booms, dams, or causeways. I think that's the concern among the clients.

Let's say I am building a temporary lumber bridge that I need to put in for a period of three months. It's located south of 60 in northern Saskatchewan or northern Alberta, and it's for clear-cut or to get into a mining site or a diamond site. We're the only ones there. The bridge is only five feet wide, and it's going over a creek three feet wide that runs seasonally for a period of three months, the same three months I'm going to be there.

Does that really need to undergo the same route as the Confederation Bridge? Because right now it does.

That would be the type of concern presented by stakeholders.

**Mr. John Maloney:** I would assume that there are a lot of waterways that are in fact navigable and that have many recreational properties along them. People have their docks, or perhaps a raft—let's say a ten-by-ten or twenty-by-twenty structure—that they swim to or jump off. Would that be considered an impairment? Would they need a permit to have that raft out there?

**Mr. David Osbaldeston:** That answer is correct, and right now they need a permit to put it in.

If you can envision something that's two feet high in the water on a twilight evening, and a water skier coming through into a bay, and this thing is not marked, but stained in a nice dark colour with preservative oil, it is probably one of the most dangerous pieces of equipment that could be put in the water. Indeed, these things do require a permit.

It's not something we would be looking at towards minor work at this point in time, I would suggest.

**Mr. John Maloney:** Have something a little more serious.

**Mr. David Osbaldeston:** A little more serious, because of its positioning; it's not attached to land. But again, this would be something that would have to be considered, I would suggest, in discussions with clients—and cottagers, definitely, are some of our biggest clients.

**Mr. John Maloney:** You also have fines with ranges that are minimal or not significant.

**Mr. David Osbaldeston:** I'm sorry...?

**Mr. John Maloney:** Your range of fines, as you've suggested, is not really a deterrent because the amount is \$500 to \$5,000. Do you have any suggestions or recommendations of what you feel might be more appropriate in the circumstances?

**Mr. Marc Grégoire:** I would presume that the proponents of projects will not be seeking increase in fines. So for this I would rather look at what the government has passed in recent legislation, or even at what this committee has done in the last year. For instance, in the Aeronautics Act, there were significant increases in fines to what we used to have; and the same thing was done previously to the Canada Shipping Act.

The fact is that \$5,000 for the proponent of a big project, a multi-million-dollar project, is pocket change. And yet that's the only power that we have now. So we think the amount of the fine should be big enough to discourage somebody from not obeying the law. Today it's not; it's a pure joke.

• (1155)

**The Chair:** Monsieur Laframboise.

[*Translation*]

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

I think that the way in which you have summarized these pressing problems is interesting. It makes me want to go further. Tell me if I am wrong, but if we decided, for example, to exclude minor waters, navigable ones, it would not mean that works would not be subject to regulations. Provinces have regulations and municipalities may well have too. So, just because we decided to focus on the Navigable Waters Protection Act, it would not mean that construction and

works would not be subject to regulations. Do I understand it correctly?

**Mr. Marc Grégoire:** You are correct.

**Mr. Mario Laframboise:** The problem is that regulations are piled on top of regulations and the works themselves are being delayed in a climate where significant sums will soon be spent on infrastructure. Quebec will be making a number of announcements. The Quebec government, that is; it will be making a number of announcements.

I think that it is time to remove some of the federal burden in this and to concentrate on the major projects.

As well, we are going to define minor waters. If I understood correctly, you are not providing that definition today because you want us all to work on it together. Right away, that is going to eliminate some of the applications. Do you know how many we could eliminate? Minor waters...We are going to focus on principal waterways. Have you determined the scope of that?

**Mr. Marc Grégoire:** I would just be speculating. It will depend directly on the definition we choose. The closer the definition of waterways moves towards the definition of a major river or a navigable channel, the more our workload will be reduced. Presently, we have a large number of applications for small streams and watercourses where there is very little water. We have applications for places where water flows only in the spring. It will depend on the definition we arrive at after going through the exercise.

**Mr. Mario Laframboise:** You set up your table by work of minor, moderate and major impact, so clearly...

**Mr. Marc Grégoire:** We did not set it up by the kind of waterway.

**Mr. Mario Laframboise:** No. So if we redefined minor works, for sure they would probably be eliminated. Then, if we modify the definition of "minor waters", we would be addressing the problem of moderate works, maybe even some major works. As you said, your table is not by the kind of waterway, but by the kind of project.

The act does or does not apply to four "named works": bridges, booms, dams and causeways. Are you proposing to change these? Can we take them out?

**Mr. Marc Grégoire:** Our proposal is to take them out.

**Mr. Mario Laframboise:** Right.

**Mr. Marc Grégoire:** Our proposal is to remove them from the act in order to leave the department with the responsibility to decide if an application is really needed. At the moment, the department does not have this flexibility with the four named categories.

**Mr. Mario Laframboise:** They are set in stone.

**Mr. Marc Grégoire:** Yes. For example, we could not make an exception and issue a brochure on bridges under five feet, because the act stipulates that an assessment is required for all bridges.

**Mr. Mario Laframboise:** Right. Now I understand. It is probably case law that forced you into this.

**Mr. Marc Grégoire:** For the four "named works", it is not case law, it is the act itself that requires it.

**Mr. Mario Laframboise:** Right.

**Mr. Marc Grégoire:** We have to do everything if it has one of those names. Case law comes into play for the type of water. Over the years...

• (1200)

**Mr. Mario Laframboise:** All waters.

**Mr. Marc Grégoire:** It is all waters now.

**Mr. Mario Laframboise:** As long as something floats in it, that is that.

**Mr. Marc Grégoire:** Yes. They had to get permission under the Navigable Waters Protection Act to build the hockey stadium west of Ottawa.

**Mr. Mario Laframboise:** The Corel Centre.

**Mr. Marc Grégoire:** They had to get permission because there was a little creek.

**Mr. Mario Laframboise:** I understand. That is why it is high time to modernize the act. If we wanted to study this quite quickly, would you be able to provide us with recommendations? Let us suppose that we are in general agreement with what you have given us, and we asked the legislative drafter to write some provisions. Could you provide some reasonably speedy recommendations on the points that you have presented to us?

**Mr. Marc Grégoire:** We have had discussions with the minister about the request he made to the committee in January. The minister asked the committee to hold public consultations on the act in general and to come up with precise recommendations on the amendments that should be made or on the wording of a new act. The committee wrote back to the minister saying that it did not think it wanted to do that because it first wanted to look at some specific aspects of the present act and to try to improve it.

If that is what the committee wants to do, we can provide the seven items that it should look at. As we understand the program, these are the items that would benefit employees most in terms of reducing their workload and eliminating the irritants that various stakeholders have mentioned most frequently in recent years.

We are not going to give you proposals right away. The committee must hold consultations here or elsewhere. The committee can decide that. The consultations would deal with those items or with others that the committee saw fit to look at. It would report to the minister, and then we...

**Mr. Mario Laframboise:** A bill would be prepared.

**Mr. Marc Grégoire:** Correct.

**Mr. Mario Laframboise:** Very good. You have looked at other acts. If I understand correctly, no one has gone any further.

**Mr. Marc Grégoire:** It seems to be an international problem.

**Mr. Mario Laframboise:** Exactly.

Thank you.

[English]

**The Chair:** Mr. Masse.

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

Thank you, gentlemen, for coming back again.

I want to go through the table to make sure I got it right, clarifying that, because there was a lot of confusion about the numbers. I want to make sure I'm reading them right.

The number of applications you've received right now is the lowest since 1999. I just want to make sure. Thank you for averaging them over the years. It is helpful to see. This is 1,960.

**Mr. David Osbaldeston:** That's correct.

**Mr. Brian Masse:** Okay. Then in 2007 you had the second-most approved, just under 2006, with 26. Then you have the best year of lowest amounts of carry-over, and that's correct as well, that 1,669?

**Mr. David Osbaldeston:** That's correct.

**Mr. Brian Masse:** Then, with your new program, you expect another 25% reduction?

**Mr. Marc Grégoire:** In the a small one.

**Mr. Brian Masse:** In the small one.

**Mr. Marc Grégoire:** Yes. So if you look at—

**Mr. Brian Masse:** The next chart?

**Mr. Marc Grégoire:** —the next chart, “major, medium, minor”, these pamphlets only look at the minor one.

**Mr. Brian Masse:** Okay, so it will just be the 484.... Our 622 average, then, will be reduced.

I was looking at that. Maybe you can describe what a major work would be. I looked at the minor works, and you had dredging, submarine cables, docks, pipeline crossings. To me, they seem like pretty big operations and considerations. What would be the difference between the minor works and the major work?

**Mr. David Osbaldeston:** Major work is defined as something that would require an environmental assessment to be conducted by law. That law is both garnered out of CEAA, the act, and under our particular act. If substantial interference or a potential for substantial interference to navigation is foreseen, that would garner an environmental assessment requirement, triggering CEAA.

In addition, if it's an unlawful work that is now coming back for formal approval, then that too would automatically generate an environmental assessment. So, in short, environmental assessment is required.

• (1205)

**Mr. Brian Masse:** In a broad range, of course, of different types of projects.

Is that why the environmentalists would be concerned, that essentially there would be two camps? Is it because you would be eating into that number in terms of them moving down to minor works and there would be quite a lot of concern from environmental groups? I sense that from looking at the first day, that we're going to get two camps on this thing, but that would probably be the sticking point for those who have environmental concerns.

**Mr. David Osbaldeston:** Yes.

**Mr. Brian Masse:** What would they be based on in your opinion? I know they speak for themselves, but I would like to hear it from you.

**Mr. David Osbaldeston:** They know these applications currently generate an environmental assessment in some conditions. An environmental assessment will delay approval and development, and some conditions in an environmental assessment may result in the document being rejected.

As far as we know, they're looking for a time element, because, obviously, if the environmentalists have an environmental concern, time is of the essence for them to be able to be heard.

**Mr. Brian Masse:** Would there be those who would suggest those are frivolous environmental concerns? If there's a real concern about going through due diligence on those things, I could see the concern, saying those are considered frivolous or they shouldn't even have to go through the review. What would be the case there?

**Mr. David Osbaldeston:** We're trying to send things off that have, from our perception, a substantial interference to navigation. Our major works are indeed major works that may have a substantial impact on the environment, and that's where we feel our resources should be dealt with.

Conversely, with the minor works we've identified, we have identified that these do not have substantial interference to navigation. Aerial cable, for example, is 400 feet off the body of water and going between two cliff faces. Even though you can float a canoe on the water, you won't get a sailboat on the water. It's not a substantial interference, and that is our particular interest in business, so why delay our navigational approval?

If an environmental concern could be triggered through other pieces of legislation, either provincial environmental assessments that would be conducted, for example, for building posts on the provincial shoreline, if there are fisheries concerns, it could be triggered by the Fisheries Act, even a small bridge, for example, that may go over a waterway, just the fact that it casts a shadow on a waterway could change the fish habitat underneath, but the fisheries people will pick that up in their review of the project.

**Mr. Brian Masse:** I'm sure there are groups that will be concerned with those changes but also with some more of the things that can change the fine. But the fine can be changed through an amendment to the current act right now. Is that correct?

**Mr. Marc Grégoire:** Everything that we presented today can be done through amending the present act.

**Mr. Brian Masse:** So yes, it's just a matter of the minister submitting or having a private member's bill or whatever. But it could go that route, as well.

When we had a discussion yesterday, it was with regard to—not yesterday, but last week—staffing. When I went through the minutes I saw that one of the things you mentioned was that it took over a year to bring on and train a new staff member. That seems like a long time. You can train a police officer in less time.

Can there not be some consideration given to increasing the staffing component, as well? Because I think we are going to have two groups on this. It could take a long time to get through some of this. We go through a full review, get legislation developed, Parliament continues, and so forth. Hence, I'm a little bit concerned. It sounds like you've done a successful job here of reducing time and moving on in your current structure. But can there not be that type of

a pronged approach too? Because even if we get these changes that you're seeking agreed to, it is going to take a number of hearings. It is going to be, I think, a lot more complicated than people think to get this through.

**Mr. Marc Grégoire:** I've asked David and his team whether, if we were to double the number of people you have now, you would get rid of all of the files in stock there. And the answer was a clear no. Most of them are hung up to another process. In most cases, it is an environmental process, or the work is delayed and the file stays there waiting for things to happen.

Nevertheless, as I told you, we felt that probably, on the environmental impact assessment side of the House, we needed to throw in more resources. And what we decided to do a while ago—and I didn't mention that at our last appearance—is an in-depth study of the Navigable Waters Protection Act program, including the environmental impact assessments, to see if we're resourced properly within the department.

On the timeframe, my colleague of programs, Mary Komarynskym, is leading this exercise, and we are participants in the exercise. The timeframe to complete that analysis is by June.

• (1210)

**Mr. Brian Masse:** That's helpful information. I'm glad to hear that, because I'm still struggling in terms of deciding what's committee business and so forth. I've committed to a certain amount of time, but I have other issues that I think are just as important. Not that this isn't important, but somebody building a dock or a boathouse quicker versus whether we are addressing issues in transportation and our productivity at our ports and border crossings and so forth....

I think we need to get a clear understanding. This could really open up a long process. I'm glad to hear that the department itself is doing things internally to move things along. And I sense that you're dealing with a study and so forth. I can understand that if you're waiting for other departments to move forward and so forth, you can't move the file. I just wouldn't want to see a lack of commitment of physical resources to work through the current system.

**Mr. Marc Grégoire:** We are doing the maximum. Those pamphlets were all done in the last year to improve the situation so the staff wouldn't spend time on those minor things but would focus on the big things. As your colleague, Brian Jean, mentioned in his opening remarks, with the amount of infrastructure investment being made throughout the country, the problem we see now is that it's going to increase the problems. With the massive investments being made throughout the country in infrastructure, such as roads, bridges, and other things, if we don't fix the act now—you can see those charts there—you can forecast that the number of applications will increase, especially in the large project column. And the delays will increase.

**Mr. Brian Masse:** But you're down to your lowest number of applications ever.

Thank you.

**The Chair:** Before I go to Mr. Watson, I think we're just having a bit of a speaker problem, so I will just let Mr. Laframboise hook up and see if it works.

If I may, I want to make a comment, and I think Mr. Jean tried to emphasize this. I have served municipally and provincially, and I know the difficulties. It's the littlest of projects that seem to take the most time, and therefore the big projects get delayed. Hopefully, cleaning the table by half creates the opportunity for the staff to deal with the projects you're talking about.

That's my interpretation. I would hope it would be close to correct.

**Mr. David Osbaldeston:** I believe you're correct.

Even with the major projects, I just want to emphasize that if you're talking about infrastructure and a highway construction, you may have a large bridge going over the waterway, but you're also in every small culvert. People really don't care about the culvert. We would rather have the resource looking at the bridge, as long as the culvert is built in a safe manner and to proper design standards.

**Mr. Brian Masse:** But the culvert would be a minor work, right?

**Mr. David Osbaldeston:** That's what we would foresee—culverts becoming minor works.

**Mr. Brian Masse:** Okay. Thank you.

**The Chair:** Mr. Laframboise, are you hooked up? Good.

Go ahead, Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair.

We'll presume that for the public record and for anybody reading the transcripts later on, the speaker problem wasn't a problem with our previous speaker, but in fact an earpiece problem experienced by one of the members opposite. I just wanted to clear that up.

Thank you to our witnesses here today.

Of course the importance of this act isn't only about how quickly you can build a boathouse; it's also about whether something like bringing forward a proposal to twin the Ambassador Bridge would also be captured under it. It's for works big and small.

I want to start with the chart on applications that you provided for us. I want to ask you a few questions about applications that are denied. First, are the denials based on a failed EA, or are other factors involved when applications are denied?

• (1215)

**Mr. David Osbaldeston:** In some cases they are based on a failed EA. In that particular case—a failed EA—by law we cannot issue an approval, even though our navigational assessment might be positive. In other situations it could be because of a failure to find a way to accommodate the work in a safe manner, even with modification. This particular number also shows in the denials shown as “closed without approval”. These files are closed because we've asked for the applicant to provide us with more information, and they've never come back.

As you can see, there's very little we deny or refuse. I think that's the main thing: if somebody has a need to put something in the water, over the water, under the water, or through the water, and has a valid need to do it, we'll try our utmost to get it done in a safe manner.

**Mr. Jeff Watson:** Two questions come from that, then. First, is the environmental assessment process a duplication of other

environmental assessments that would be applied to a project at a different jurisdictional level or a different departmental level? Second, is there currently in the legislation an appeal mechanism for those that are denied?

**Mr. David Osbaldeston:** I'm not an environmental assessment expert, but I can tell you that under provincial law there are provincial requirements for environmental assessments. Quite often they are carried out simultaneously.

As for an appeal process, I am unaware. We don't deal with environmental assessments. We're on the navigational side.

There's no appeal provision with respect to an NWPA approval; I thought the question referred to an environmental assessment.

**Mr. Jeff Watson:** No; it was whether there is an appeal mechanism to appeal the denial if your application is denied.

**Mr. David Osbaldeston:** No, there's not. There's no appeal mechanism capability in the legislation.

**Mr. Jeff Watson:** You brought forward seven areas in which we could consult stakeholders. Is there an interconnectedness to these provisions? In other words, do all seven have to be considered, or could three or four be considered? If we miss a significant one, could it have a bearing on one of the others? That's the first question I want to put out there for you.

**Mr. Marc Grégoire:** No. It's like a menu, but we would like to have it all. These are the seven most important things for us if we are to keep this piece of legislation.

The first three go together in a sense, but the next four are pretty distinct. The definition of water, the definition of works, and the denaming of the four “named” works are pretty well together, while the inspection power, the fines, and all that are pretty distinct, but they make a total group of what would be very advisable to do with this act.

**Mr. Jeff Watson:** Your answer actually confuses me now, because you say the first three have, if I understand you correctly, some interconnectedness, and the other four are distinct. Let me ask the question, then: if we were to define navigable waters and take your first recommendation, but didn't do the other two, would that have impact on the other two? Do you understand what I'm saying?

**Mr. Marc Grégoire:** It has no impact, but what I meant is that they are more related to each other than the next four.

**Mr. Jeff Watson:** Is the goal of removing the four works—boom, dam, bridge, causeway—to increase the discretion of the department on whether or not to engage a process?

**Mr. David Osbaldeston:** Yes. It's to gauge the length of the process, which therefore extrapolates into time and cost.

**Mr. Jeff Watson:** If those are removed to the discretion of the department, what criteria do you follow then in making your assessments? Are you going to follow current regulations, are new regulations needed, should we be prescriptive in the legislation about some of these things, or are you following court interpretations—or is it a combination of those?

Can you give us a sense of how you'd make your decision, based on—

**Mr. Marc Grégoire:** That would really depend on the definitions we came out with. To answer your question from a philosophical perspective, we would very much prefer performance-based legislation or regulation to prescriptive. This act is probably as prescriptive as can be. It prescribes everything. There are no performance indicators in it at all.

• (1220)

**Mr. Jeff Watson:** The idea of increasing discretion is similar to the process in the United States in that respect, if I understand it correctly.

**Mr. Marc Grégoire:** No. Today, for instance, we came out, using the discretion we have on minor works, with a series of exclusions, which are described in the little blue pamphlets. Getting rid of the four named would increase the possibility of extending that. As well, depending on the definition we came out with, we could further extend exemptions.

**Mr. Jeff Watson:** Should there be an appeal mechanism for claims that are denied?

**Mr. Marc Grégoire:** The number of denials is very small, and even though there is no appeal mechanism, nothing prevents a proponent from re-submitting a new application with a set of different mitigation measures. In the case of those we couldn't accept, as David mentioned, it's either because the mitigation measures were not accepted by the proponent or what the proponent proposed was not acceptable to us.

But there's a discussion, and if we can't agree on what's needed... For instance, if vessels need to continue to pass during the construction and the proponent doesn't want that, well, it's unlikely we'll resolve this. But in the vast majority of cases, there is always a compromise possible from both sides.

**Mr. Jeff Watson:** You're asking about explicit inspection powers. Currently there are fines under the act, but no enforcement. Is that fair to say?

So if somebody was fined, who does the fining, or who follows up on whether the fine is paid? Explain how it is currently.

**Mr. David Osbaldeston:** Fortunately at this point in time people who want our approvals are more than willing to welcome us onto their land and their water and up in the air to take a look at the sites they're proposing to put the work on.

The problem arises when we have a complaint about somebody else's work, which may be unlawful, and we need to go to see what they're talking about. We do not have inspection powers whereby we can just come onto the land or onto their waterway in order to access the site to view it. We're forced to stop and to make a formal request—which we normally would like to do anyway, but in some situations it's not possible: there's nobody on the land, and/or it's a remote area.

So the answer to your question is that there's nothing. The word "inspection" isn't even in our legislation.

**The Chair:** Thank you.

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

**The Chair:** Mr. Volpe.

**Hon. Joseph Volpe:** Merci, Monsieur Grégoire and Mr. Osbaldeston.

I have some difficulties getting a firm handle on this. I don't normally admit to weakness like that, and I hope this will be the last time.

I listened to you and I read the documentation and I recall what I tried to get at when we were here at the steering committee. That is, if we proceed according to course A, small definitions, etc., or course B, what will be the impact on cases that are outstanding that might be in the courts or that are in process in terms of being dealt with according to the status quo? I don't think I've had a good enough answer to that. I'm looking at your charts, and it appears very roughly that about 50% of the applications get dealt with satisfactorily over the course of the year in one way or another, but they're dealt with.

Very roughly, again, very rarely do you have more than 5% rejection. So I ask myself this, and maybe, Monsieur Grégoire, you're the best person to answer this. Is a solution to this problem additional staff?

**Mr. Marc Grégoire:** No, not from where I sit today. As I just explained, we are doing a study to see if that is the case. From what we have looked at now, the most acute problem is on the portion of environmental assessments. Within the department we have the navigable waters program within my responsibility under safety and security. This program is led by David here. Another part of the government within the programs group, here in Ottawa and throughout the regions, has the responsibility of doing the environmental impact assessment and the environmental analysis.

So if David or one of his staff is dealing with a project and receives an application under the Navigable Waters Protection Act, they do the navigation safety analysis and then they send the project to our colleagues in programs, who then do the environmental analysis. On bigger projects this is multi-departmental. Many times another department will be the lead to do the environmental analysis and a large number of people will be consulted. The navigable water becomes only a small component of it.

The answer doesn't appear to be, from what I've learned of this program, to throw more people at the program. It would be far more efficient to do the blue pamphlets that we did to get rid of these small little things and put our attention elsewhere, and to do those seven things that we've outlined today.

I will remind you that our preference is to repeal this act entirely and to come out with a new piece of legislation. Should that not be possible in the near future, the best thing to do is to make those improvements that could significantly not only improve our life, but more importantly from where you stand, I believe, would improve the life of the stakeholders of the various citizens across the country who want to do projects. That would relieve them of one burden, one legislative or regulatory burden. It would be one less to deal with.

•(1225)

**Hon. Joseph Volpe:** I appreciate that. The colour of my hair is due in part to the fact that I had teenage children—they passed that very crucial period—and the other is having to deal with some of the bureaucracies to which you have just made allusion. I can resolve the first one. It's a personal thing and it's chronological. The other one is a little more difficult.

I'm wondering, Mr. Grégoire, whether in fact your suggestion that we come forward with brand-new legislation isn't the best route, especially given the answers that I've heard from Mr. Osbaldeston.

Did I pronounce that correctly?

**Mr. David Osbaldeston:** Close enough.

**Hon. Joseph Volpe:** For every question that he's answered, he's introduced a nuance that, to my ears, has resonated as another authority coming into play with a definition that the questioner would not have contemplated, given the fact that there isn't the body of experience leading up to the question that the respondent was prepared to provide. This, I suppose, is more of a rhetorical question for all colleagues, but it's more directed to you, in all honesty, and I don't want to compromise you. I'm wondering whether this is the right thing for the committee to do: to attempt to redefine the minutiae for the purposes of getting something done partially, quickly, or whether it is best left to the department and the minister to come up with the legislation for this committee to respond to as it conducts its study.

**Mr. Marc Grégoire:** I will respond to that, and I will redirect you to the letter sent to the committee by the minister. It is Minister Cannon's wish that the committee work on this legislation, so it's not our decision. There are a variety of ways we can look at various pieces of legislation, and within the department I can say we've touched on all of them. We can use a panel. The minister can name a panel, as he did for the Railway Safety Act; the panel would go around the country and come back with a report with a number of recommendations on legislative changes. Or we can do it ourselves, as we did for the Aeronautics Act, for instance. We can go around the country and consult, assemble a number of recommendations, and then propose legislation. Or the minister can ask this committee to review it, which he has done.

•(1230)

**Hon. Joseph Volpe:** I appreciate that, and I don't want to put you in an unfair position as a departmental official disagreeing with the request of the minister. That's not my intention, because I was one of those who asked whether this committee shouldn't ask the minister to give us the bill on first reading so that we could shape the bill and then bring it more clearly and more quickly and expeditiously for approval into the House. I'm actually just simply asking, from an efficiency and experience perspective, whether the most practical thing for this committee to do would be to rely on that vast body of data and knowledge that you have, in order to give us the insights that we're going to need.

From what I can decipher from what you're telling us, we're going to go into a minefield of interdepartmental competitiveness. And I don't mean that negatively, but in your last response to me, Monsieur Grégoire, you said the application comes in to you, you say what it

is, once you give your approval off it goes to environmental assessment, and then maybe from there to something else.

I think if we want to do things appropriately for our fellow citizens, we probably want to be able to make sure that the safety measures associated with some of that process are dealt with in as quick a way as possible. I'm not sure that's going to be done by us. You've quite rightly pointed out three alternatives.

Again, I don't want to put you on the spot, and if you don't want to answer, that's fine. You've given us three alternatives, but I'm just wondering whether this committee's going to be spinning its wheels for several months when the answers are already there.

**Mr. Marc Grégoire:** No, the answers are not there. It's not a minefield, certainly, but these are all difficult issues to deal with. I think it was extremely appropriate for the minister to task this committee to do that, because if this committee is able to come up with a consensus on recommendations to the minister, it would certainly make things far easier for the minister then to get the approval to draft a piece of legislation.

**Hon. Joseph Volpe:** There's nothing to prevent him from doing that now.

**Mr. Marc Grégoire:** Yes, but the minister has chosen to ask the committee. It's for the committee to decide whether it wants to deal with it or not.

**The Chair:** I'm going to go to Monsieur Carrier.

[Translation]

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

To some extent, I share the concerns expressed by my Liberal colleague. But I am still in favour of an approach by which we would specify the amendments to the Navigable Waters Protection Act and we would consult with stakeholders about them.

As to the term "minor waters", I would like you to provide us with definitions. It would be good not to rely on a term that is very general and, at the same time, largely left to everyone's discretion. For one person, a navigable waterway may seem minor while for another it can be quite major. With your knowledge of the area, you could provide us with a kind of table where you would provide various possible definitions of minor waters. In that way, we would have, from the outset, a range of possibilities or exceptions that we could include in the bill. At least, we would have some kind of guide. Otherwise, we would have to rely on information coming from all over the place and to come up with our own ideas.

The same applies to the definition of the term "minor works". That is the term you already use in your brochures. You could tell us what limits to use in defining the term. There again, it is largely left to everyone's discretion. For some, a certain number of metres is a minor work, while for others, it is taking up half a river.

Would it be possible to come up with this kind of table with different definitions from which we could choose after having discussed it amongst ourselves, or during the tour?

•(1235)

**Mr. Marc Grégoire:** The biggest problem with your request is that our proposal was not at all going in that direction. In fact, we were proposing that the act be repealed and replaced by a new one with a completely different approach. We have never held public consultations, and it would be very difficult for us to gauge what would be acceptable for Canadians with one point of view or another.

When we review legislation, we do not start by proposing things. Otherwise, the people with whom we are consulting will feel that decisions have already been made or are about to be made. When we hold consultations, we do so by themes, and we want to hear what people have to say about them. Then we make a recommendation. If, at the outset, our experts provide the answer they want, you can bet that the consultation will not be well received.

**Mr. Robert Carrier:** You did not understand what I meant. I do not want your definition, I want several possible definitions, ideas for definitions.

**Mr. Marc Grégoire:** Ideas we have.

**Mr. Robert Carrier:** We are not experts in navigable waterways. With your knowledge of the area, you could give us several possible ideas rather than just one. That would allow us to assess how far the term "minor waters" could go. Maybe that would end up in the act.

**Mr. Marc Grégoire:** Case law defines minor waters as any body of water that can support a canoe or a kayak, that is about four inches, or ten centimetres, of water, for a very short distance. We have no choice but to tell you that this is much too restrictive. The last time that we spoke to you, we discussed exclusions. We would like to exclude a lot of navigable waters all across the country.

As to the committee's request for definitions, I can tell you that we should have as few restrictions as possible. But would that be twelve inches, or a metre, or 500 metres long? Does someone have to be able to paddle for a kilometre before having to portage? At the moment, if someone can paddle a canoe for a minute, get out of the water, paddle again, and do that for two days, it is navigable water. But that definition makes no sense.

**Mr. Robert Carrier:** On the matter of excluding bridges, booms and dams, you should do a full study. The minister has no discretion.

In my constituency, there is a dam built in 1929, I think. You say that the Navigable Waters Protection Act is one of our oldest ones. It dates from about 1878. The dam has made all navigation impossible. We constantly get complaints from pleasure boaters that the dam stops them from getting around.

**Mr. Marc Grégoire:** Are you talking about the dam on the Rivière des Prairies?

**Mr. Robert Carrier:** Yes. I have heard people talking about it for several years. Under the current act, you would have conducted a full study and issued a decision.

•(1240)

**Mr. Marc Grégoire:** That must have been done before it was built.

**Mr. Robert Carrier:** The act dates back to 1878.

**Mr. Marc Grégoire:** But your dam was built in 1929.

**Mr. Robert Carrier:** It was built afterwards. In that case, the act applied.

[*English*]

**The Chair:** Order, please.

There are too many conversations going on, and I can hardly hear the member.

[*Translation*]

**Mr. Marc Grégoire:** The act applied. I doubt if those records from 1925 can easily be found. But an impact study was probably done and a permit issued because the dam was built.

**Mr. Robert Carrier:** That does not change the fact that it has made navigation impossible.

**Mr. Marc Grégoire:** Was it navigable at the time? Perhaps the dam improved the navigation. Perhaps the Rivière des Prairies was not navigable then; perhaps the current was too strong or there were too many obstructions. Perhaps building the dam improved things.

[*English*]

**The Chair:** Mr. Osbaldeston, a small comment, and then Mr. Fast.

**Mr. David Osbaldeston:** Prior to 1992, many crown-built facilities were not approved under the Navigable Waters Protection Act. Up to that point the NWPA did not apply to crown-constructed works because the crown looked after itself and all interests of those under it. In 1992, with the Oldman River Dam decision, the Supreme Court indicated that was not so.

My suggestion is that because of the age of that work and the supposition that it was probably built with provincial financial interests, it probably was not approved. At this point in time, because the dam has been constructed.... Once you construct a dam you create a new standard of navigation, the standard of navigation being the lake up top and maybe a trickle down below. That is the new standard of navigation that we protect. While the individual may have concerns with respect to the trickle of water down below, that's the standard of navigation we protect for them.

**The Chair:** Mr. Fast.

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

Thank you, gentlemen, for appearing before us again on this very important issue. I can tell you that there are many people across Canada who are looking forward to these amendments or new legislation coming forward—especially municipalities.

Just so I understand why you're proposing seven amendments, as opposed to a wholesale review of the act, it's my understanding that it's an issue of timing. As you know, our government has committed \$33 billion in infrastructure money over the next seven years. Any obstacle that stands in the way of getting that money delivered is going to cost the country significantly.



In the last two years we've passed a number of pieces of legislation—for example, the bridges and tunnels, and the aeronautics provisions. Those provisions go back many years, perhaps to the year 2000 or 2001, under previous Liberal governments. There were various iterations along the way, but they never were actually passed, simply because Parliament ran out of time. Now we're in a minority government situation—the government could fall at any time—and there is no guarantee that there will be a majority government the next time around.

Am I correct in assuming that the purpose for bringing forward these seven amendments is to speed up the process so we can address some of those critical infrastructure needs in Canada right now?

**Mr. Marc Grégoire:** Actually, I'll go back to the letter we received from Mr. Tweed on February 15. Your chair said that the committee believes that rather than deal with the entire piece of legislation, it would better serve the needs of stakeholders to first deal with those sections that can be resolved quickly. So our wish, when we came here two weeks ago, was to review the whole act.

The reason we came here with the wish not to look only at seven aspects is at the request of the committee, but we still think that these would be good, positive amendments to make to the legislation.

**Mr. Ed Fast:** Well, hearing some of the comments at the table right now from the opposition members, I'm not sure whether they support moving forward with amendments as opposed to a completely new act, so let me rephrase my question.

Would you agree with me that moving forward with these amendments will significantly speed up the process of getting the needed legislation in place to address some of the infrastructure needs in our country?

•(1245)

**Mr. Marc Grégoire:** Yes.

**Mr. Ed Fast:** All right.

If I could now follow up on a report that you gave us, it was a review of approaches to navigable waters protection in other jurisdictions, foreign jurisdictions.

As I understand it, you chose, I believe, seven different countries to review their legislation and how it addresses their needs. I was a little puzzled, because we had Vietnam in there, yet you neglected to study places such as Great Britain, France, Germany, Australia. Australia has topography that might be similar to ours. I'm just wondering why you chose those countries.

And as a follow-up question, of those countries, which of those legislative frameworks most closely resembles what Canada probably needs at this time?

**Mr. David Osbaldeston:** The choosing of the countries in that particular scope was really limited by time and quick Internet access. It was a request for a very quick study that I asked one of our consultants to do for another purpose, and I needed a turnaround time that was very short. So the answer to why these countries were chosen is the fact that they came up quickest in his research scan, with readily available information to give us some idea of equivalencies that may exist out there, or not.

Further studies could be done down the road, but I think I'd rather spend our time on new legislation at this point, or modifications.

On the second piece of your question—who would be most similar to us—from what we picked up, the U.S. is probably most similar to us, but they have great differences as well. Aside from federal law dealing mostly with interstate commerce waters, they then have individual state laws that deal with internal inland waters to the state. We don't have that. We have federal waters and federal laws.

So there are variances throughout that differ from us in each country that we looked at, and there are others that match up, the U.S. probably the most. The U.S. does regulate their aids to navigation. It does provide for navigation rules in regulating those aids. They do issue permits, similar to us. They call it a permit; we call it an approval. And they do base their issuance on evaluations of impact on navigation on those waterways interstate.

There is an environmental assessment process there—similar to our environmental assessment process—that looks at fishing and game and other issues.

They do have some responsibility for identifying and removing obstructions, mind you, because the Army Corps of Engineers there have authority. They have a lot more power than we have with our fines, and we have no cost recovery, which they do. They also have capability to actually pursue criminal and civil actions for violations, which we don't have.

So there is a system of enforcement and compliance in the U.S., which because of our proximity to them, we can relate to. We don't have that. Whether it would be a good thing would be something that would be obviously considered in consultations.

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

We have a few minutes left. I will open the floor up for a couple of minutes if anybody has any follow-up questions. If not... Is everybody good?

**Mr. Paul Zed (Saint John, Lib.):** Great.

**The Chair:** Well, I will thank you again for attending. We appreciate your input and hopefully we can move forward. Thank you very much.

Mr. Volpe.

•(1250)

**Hon. Joseph Volpe:** Mr. Chairman, an issue has come up during the course of this meeting that may or may not have any impact on the debates we've had so far, but I want to take advantage of the fact that the department officials are here. If they're in a position to address this issue, or whether this is going to be addressed by Mr. Jean, that's fine.

There is a voice in the marketplace today that suggests that NavCanada may be in some serious financial difficulties as a result of some investments made in the sub-prime market. I would like either the parliamentary secretary, through the minister, or even the department to give us an indication at our next meeting whether that is in fact the case or whether they can give this committee a sense of the stability of one of the foundation stones of our transportation system.

**Mr. Marc Grégoire:** NavCanada is a private company, and I suggest that if you want to know more about their financial situation, you should call them here.

We regulate NavCanada from a safety perspective, and we constantly monitor the operations from a safety perspective, but certainly not the financial situation. They are a not-for-profit organization, so presumably, if they had financial difficulties, they would increase their rates. Over the years they have decreased their rates and they have increased their rates, but there are enough airplanes in the sky to pay for whatever the cost is.

**Hon. Joseph Volpe:** My question really was related to the role that Transport Canada has with a not-for-profit organization, because whatever it does is going to impact on the security in the skies and on the ground. So I want to at least put the department, the minister, and this committee on notice that we may be finding ourselves in a position where we'll be asking very specific questions in that regard.

I appreciate that Mr. Grégoire has already given us an indication that he, I guess, is aware of some of the general circumstances associated with this, and that gives me some level of confidence that Transport Canada is actually monitoring the situation.

I look forward to an opportunity in the course of these next several days, at least those that are open to us as a committee, to get more specific information. If that might require, Mr. Chairman, bringing NavCanada before this committee, then maybe we should consider that as well.

**Mr. Marc Grégoire:** The air navigation system was sold to NavCanada on November 1, 1996, so almost twelve years ago, eleven and a half years ago. NavCanada has been extremely successful in ensuring safety in this country and in a very efficient manner.

We continue to monitor them. Part 8 of the regulations under the Aeronautics Act deals with NavCanada, and we have a number of inspectors, both here and in all the regions, constantly overseeing what's going on from a safety perspective.

**Hon. Joseph Volpe:** Thank you, Mr. Grégoire.

**The Chair:** Thank you.

The meeting is adjourned.

---







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

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

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

---

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

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