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Chair

Mr. Mervin Tweed

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•(1110)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):
Good morning, everyone. Welcome to meeting 25 of the Standing Committee on Transport, Infrastructure and Communities.

The order of the day, pursuant to Standing Order 108(2), is a study of the current status of navigation protection of the Canadian waterways, including their governance and use, and the operation of the current Navigable Waters Protection Act.

Joining us today is Mr. Ron Middleton, the director of environmental management services for the Ministry of Transportation in Alberta.

Just for the committee's understanding, Alberta is here today representing not only themselves, but B.C., Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, the Yukon, and the Northwest Territories. We have distributed the letter the provinces have sent to the committee in support of the presentation, just so that you're aware. It was distributed by e-mail yesterday. If you have it, then you'll know who Mr. Middleton is representing and speaking for.

I'm sure you've been made aware of all the rules and regulations. It's basically a seven- to ten-minute presentation, and then members will have questions.

Mr. Middleton.

Mr. Ron Middleton (Director, Environmental Management Services, Ministry of Transportation, Government of Alberta):
Thank you.

We really appreciate the opportunity to speak to this. I think you've all discovered that this act is one that many of us involved in the implementation of infrastructure projects have found problematic over the years; hence the high degree of agreement that changes are required. We are all largely on the same side. The differences are probably more of degree than substance.

We agree with Transport Canada that a total rewrite of the act is something that is well worth doing, but we also are rather desperate to see some quick fixes if these are in fact possible. There's a lot of work under way, and this particular act is resulting in significant delays in important infrastructure projects right now. I'm sure you've heard that from other witnesses.

We believe the objective of any amendments you undertake should be to eliminate the need for approvals where no significant public good is being achieved. This should allow Transport Canada

to speed up the processing of projects that warrant its attention and undertake activities that are of benefit. This would also remove the automatic triggering of environmental assessment and consultation requirements that further delay the approval process.

We are, both provincially and nationally, working with Transport Canada on cooperative ventures to improve the approvals processes within the existing act. However, we believe significant change is needed to the act; only so much can be achieved through goodwill and cooperation.

Specifically, we are looking for an improvement in the timeliness of approvals, the application of the act to areas where it does produce some good, a reasonable accommodation of navigation, and regulation of activities where they are warranted, not where they are not.

I'm skipping over the introductory material here to get to the meat of the matter in an effort to improve the timeliness of this. I'm going to cut to the chase here and talk about the recommended changes or the kinds of changes we would like to see in the act.

The first is the inclusion of a definition of “navigable waters”. I've provided some handouts here. Number one is the definition as it exists in the act. As you can see, it provides virtually nothing by way of guidance to anybody. We believe a clear definition, or at least a clear statement of intention of what the act is meant to regulate, should reduce the ambiguity and allow us to skip the first of the approvals process steps, that of determining whether the act applies.

We believe this can be done in any number of ways. We provide some examples. You can do it by reference to the purpose of the navigation, the type of vessel that you wish to accommodate, the physical characteristics of the channel, the actual use for navigation, or some combination of these. I provide some examples in my brief.

At a minimum, we believe, the changes should eliminate the need for a project proponent to first ask Transport Canada if the act applies to a given stream, and, only after that determination is made, submit an application, recognizing that each of these steps—in our recent experience—will take at least six months.

As an example, a few years ago Alberta undertook a little project to determine whether in fact it would be possible to look at all the waterways in the province. We talked to the canoeing guides for the province. We talked to all the boating clubs. We took over 4,000 previous determinations of navigability that Transport Canada had made on streams in the province. We looked at the natural characteristics of the streams. Using those, we set up some objective criteria, classified all the streams in Alberta, and in fact produced a map of navigable waters. Now, this map of course at the present time has no status, as it were, but it certainly demonstrates that it is quite feasible to do this. I did this with one staff member working part-time for about a year.

Second, we agree with Transport Canada on amending the definition of “work” to allow the exclusion of minor works and works that have little or no impact to navigation. That's a very simple change, and we agree with that one. As to what kinds of works those might entail, that could be worked out through regulation and discussion.

- (1115)

One that I don't believe Transport Canada has put before you relates to the second figure I have provided you, and that relates to the act itself that specifies start times and completion times for works approved under the act. We're not likely to see that sort of thing in legislation nowadays, as you don't usually enshrine those kinds of things in the act, and it is problematic for us, particularly the start date. We are attempting to tender projects well in advance of six months of the start of a project. Sometimes due to project delays we must put things off. We like to put things on the shelf. We have no difficulty with putting timelines within an approval, but having these rigid dates enshrined in the act itself we think is unproductive.

We agree with Transport Canada's suggestion to remove the four named works, and this is in figure 3 showing the section of the act that's involved. Naming these works requires them to go through an extensive approval process that may not be required. I noted some discussion of this in previous transcripts, and I can certainly provide examples of where this may apply, if the committee so wishes later on.

Next, we would like to see approval renewals become automatic unless there is a reason to do otherwise. Again, every time a decision has to be made, that adds work to Transport Canada's staff, requires another decision, and by and large is not necessary. So that might require an amendment to subsection 7(2), but it also might involve subsections 11(1) and 11(2), where renewals are mentioned.

Next is a significant one that relates to the grandfathering of projects. For much of the 20th century the Navigable Waters Protection Act was only applied to major waterways and major projects across this country. Both the federal and provincial governments assumed that was the intent of the act, and that's how it was applied. As a result, very few approvals were issued for about 100 years. As a result, many of the projects out there are considered unlawful. That means that before you can even do routine maintenance you must apply for an approval, and they must be given *post facto* approval, which requires the same process as an initial approval—again, a very long and cumbersome process just to

do routine maintenance on an existing structure that's been there for many years.

There already is a grandfathering clause in the act, and we propose to modify that by effectively grandfathering every project that was built prior to 1995. We picked that date largely because that was the date Transport Canada, or its predecessors in the administration of the act, became much more active in looking at new projects, and I believe that related to the Oldman River Dam court case.

The other one we certainly agree on—and these are figures 6 and 7 in the deck I provided you—is that the advertising requirements in the act are outmoded and largely ineffective. They add time. They ask you to file plans and advertisements in places where nobody ever looks. Again, this is not the sort of thing I would expect to be enshrined in an act today. It can be dealt with in regulation and should be dealt with on a project-by-project basis. It may well be the case that individual notification of affected landowners in some cases may be more effective than advertising in the *Canada Gazette*.

The next one we would suggest, and this is relating to figure 8, is removing the phrase “in the opinion of the Minister” from subsection 10(1). This is the one that says “any lawful work may be rebuilt or repaired if, in the opinion of the Minister, interference with navigation is not increased...”.

- (1120)

Now, in our view, the requirement for that “in the opinion of the Minister” means that you must obtain separate approval even for routine maintenance and repair. Again, that's another decision that has to be made. Routine maintenance and repair is only intended to return the structure to its existing state, not to modify it. That's dealt with elsewhere in the act.

I would like to perhaps provide you with some comfort, if you believe we are going too far in trying to deregulate certain activities, by pointing out that under subsection 10(4)—and this is figure 9 in your deck, the last one—the minister, where he has seen that a structure is causing an impediment to navigation, may identify that. At the time when it comes up for repair or reconstruction, he may at that point require you to apply as if it were a new project and make whatever conditions are required at that time. That's similar to an arrangement we have with the Department of Fisheries and Oceans—Fisheries and Oceans Canada. Culverts that were built in the old days, when we didn't worry much about fish passage, we have identified between us, and when they come up for repair or replacement we are dealing with passage issues at that time.

The second-last one is that Transport Canada has proposed amending the act to include inspection powers for their officers. Quite frankly, it never occurred to us that they didn't have those powers, and we have no objections to their having them. We cooperate with all officials of all regulatory agencies when they show up on our sites.

And the last one is that Transport Canada has recommended an increase in the maximum fines under the act. Frankly, we believe this to be unnecessary at this time. It's not anything we feel strongly about, because we don't propose to get on the wrong side of the act, but we would point out that they do have, under the existing act, the authority to order you to remove structures that you install unlawfully, and that's a pretty potent deterrent in itself.

I think there are a number of issues regarding what constitutes infractions under the act, as well as the level of fines and responsibilities that should probably be addressed in a thorough rewrite of the act.

I'll leave it there. Thank you.

The Chair: Thank you very much.

Mr. Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Mr. Middleton, thank you very much. I thought your presentation was quite thorough. In fact, I had occasion to read it prior to your giving it. It's very exact, detailed, and doesn't embellish anything.

I gather this reflects the work you've already accomplished with the provincial authorities with which you had to consult. But tell me what the reaction of Transport Canada has been so far.

• (1125)

Mr. Ron Middleton: I think we're largely on side with Transport Canada. We shared this brief, as we've prepared it with our regional and federal counterparts. I know Mr. Osbaldeston is in the room, and he can attest to the fact that, again, it may be a matter of degree rather than principle that we are discussing here.

Hon. Joseph Volpe: So you don't anticipate from them any push-back on any of the recommendations you are making?

Mr. Ron Middleton: I'm hoping not.

Hon. Joseph Volpe: I'm trying to get a sense of the kind of give and take in the consultation that's taken place. This committee has been asked to look at the act with the purpose of making recommendations that could be very quickly implemented. It would be useful to get a sense of just how far the consultation has already taken place with another order or level of government that also has to deal with this.

Mr. Ron Middleton: Yes, I agree. They have seen it. I don't think there's anything in principle we object to. The biggest issue will likely be the one of definition. As I said, we've given out lots of options here. Transport Canada has asked you to provide a latitude in definition to exclude minor waterways. We certainly don't object to that. We would ask that you perhaps consider going a little farther.

Hon. Joseph Volpe: In what sense, then?

Mr. Ron Middleton: I think in a clear statement of the nature of navigation that we are wishing to protect. It's my understanding that it may not be, even as it sits in law, regarded equally across the

province. In one of the landmark cases that I have read, the Coleman decision, it suggests that, for example, in Quebec, navigability is intended as something related to commerce, not just recreation.

Hon. Joseph Volpe: In other provinces, like my own, Ontario, it does include others.

Mr. Ron Middleton: It does.

Hon. Joseph Volpe: So a more restrictive definition would probably make it easier for the federal government to monitor its own legislation.

Mr. Ron Middleton: Quite frankly, our biggest issue is that of clarity. We don't think there's a lot of value in attempting to regulate minor activities, or to monitor streams that have no prospect of being used for navigation. I think Transport Canada has said as much; hence their wish to protect navigation, not navigability.

In the short term, if you could just remove the ambiguity, such that we could eliminate that step, it would provide us with some immediate relief, even if you wished to be very conservative in your definition at this time.

Hon. Joseph Volpe: I wonder, then, whether you had an opportunity in the course of your consultation to think about some specific items. You indicated that in Quebec you're talking about navigation related to commerce, and in other places that related to pleasure as well; but I'm thinking in terms of the environmental issues associated with that as well—for example, wetlands, marshlands, etc., where there's a combination of navigation for pleasure and for safeguarding an environmental set of circumstances.

Do you see your recommendations and this legislation, or the proposed changes to the legislation, as impacting on other departments of other governments? Natural Resources Canada, for example, comes to mind, and ministries of environment in various provinces. Do you see a correlation with or an impact on them?

Mr. Ron Middleton: Only in terms of helping to streamline processes. Quite frankly, we have a great deal of redundancy in our legislation right now. Any time I wish to do anything in any stream, it requires a minimum of four approvals—two federal and two provincial. The Fisheries Act triggers the exact same CEAA requirements as the Navigable Waters Protection Act. Sometimes their undertakings are coordinated, sometimes not. But the same things are being looked at. Similarly, there is overlap between the provincial environmental water act approvals as well as our public lands act approvals.

Hon. Joseph Volpe: Perhaps as a last reflection, as I looked through this I kept searching for some sort of phrase that would have been connected with what you just said; that is, the moment the Navigable Waters Protection Act is triggered, is there a mechanism in your mind that should also immediately trigger the example you gave about the Fisheries Act as well, so that you could have two things running concurrently in the event that one would trigger the other, subsequent to a particular action?

•(1130)

Mr. Ron Middleton: I'm not sure that would be necessary. As it stands, by practice, we apply for all regulatory approvals as soon as we can in the process. I can't imagine circumstances where we are crossing a navigable water and the Fisheries Act would not be invoked, as that automatically triggers the approval process. We certainly don't object to, and indeed encourage, Transport Canada and DFO to interact on these matters.

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

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you very much, Mr. Middleton.

Before stepping into the federal political arena, I was chairman of l'Union des municipalités du Québec. I wish that people who read us or listen to us do not get the impression that we intend to cancel any type of regulation on waterways. As a person responsible for the construction and maintenance of Alberta's networks, you have to give municipalities your approval for any construction work they undertake on the waterways. Even though the legislation would not apply to waterways anymore, it does not mean that citizens and municipalities would be able to build on or develop along waterways without any approval. Some regulations apply in Alberta, and in Quebec also.

I would like you to tell us what municipalities must do presently before undertaking some construction work. Do they have to submit their project to you? What would happen if the legislation on minor waterways did not apply anymore, if we would succeed in amending the act? Provincial environmental standards would still have to be complied with.

[*English*]

Mr. Ron Middleton: Thank you. I think I got the gist of that.

A municipality is bound by the same regulation as we are as a province, and probably a few levels more.

As I mentioned before, when a municipality—or an individual, as far as that goes—wishes to develop in a waterway or build a bridge across a waterway, for example, they still have to apply under the Navigable Waters Protection Act to the extent that it applies. And we're talking about limiting that, certainly. They must apply for the federal Fisheries Act, and in Alberta they must apply under the Water Act as well as the Public Lands Act. Each one of those has regard for public safety and environmental protection.

Furthermore, as a transport agency, we in Alberta—and I can't speak for all provinces—provide the funding to municipalities for bridges and many other municipal works. When we provide that funding we require them to adhere to the same standards we use in our own construction. We do have standards regarding clearances as they relate to waterways. That's why, in part, a lot of this becomes somewhat redundant or unnecessary, because if we meet our flood clearance requirements nowadays, we are almost certainly accommodating the navigation that might occur on any given stream.

Does that give you enough?

[*Translation*]

Mr. Mario Laframboise: Yes. You talked about changing the definition. We all know that amendments are necessary. It seems to me that we should proceed as soon as possible. In your presentation, you offer several options, including the following definitions:

[...] waterways used for commerce (transport of goods, commercial fishing); waterways that can be reliably navigated by vessels with a draught of one metre; waterways of minimum width of five metres and average depth greater than half a metre at mean annual flow;

Among these definitions, do you favour one in particular or do you intend to let Government or our committee do their own analysis?

•(1135)

[*English*]

Mr. Ron Middleton: I probably should not presume to tell the Parliament of Canada what it wishes to do with its act and what it wishes to protect; hence the options that I provide.

From the perspective of ease of implementation—and perhaps this may be, by rights, a short-term fix—one that speaks to the physical characteristics of the waterways is probably the easiest to implement. That is certainly what we used in our trial project in Alberta, where we looked at the width of channel, the depth of water at certain flow frequencies, and the slope of the channel—that sort of thing. And those are the kinds of definitions that Transport Canada is using in defining minor waterways.

So in the short term, I think that is probably the easiest and the most effective way to go. If you were considering a rewrite of the entire act, I would suggest it might be worth while to have a more philosophical discussion as to exactly what we are trying to protect here, and a view as to what is best managed and regulated at the federal level versus what can be dealt with under existing legislation within the provinces.

[*Translation*]

Mr. Mario Laframboise: If I understand correctly, you have already examined the characteristics of Alberta waterways as they relate to navigation and you would be able, if we adopted a new definition, to identify all the waterways in the province that have to comply with the regulations. If I understood correctly, the act should be complemented by a schedule naming all the waterways in order to make things much clearer. Is it correct?

[*English*]

Mr. Ron Middleton: Absolutely. I would also say you could even do it by reference to a map, recognizing that there are many unnamed waterways and that the list might be very long by the end of the day.

In Alberta we have done the same thing, again with respect to fisheries, and in fact there are maps referenced in the act itself. These can be updated as well, in a similar way to how a regulation can be updated. So if our original map were found to be deficient, we could amend it as well.

[Translation]

Mr. Mario Laframboise: On number 9, you say you would not object to amending the act to include inspection powers for Navigable Waters Protection Officers or having your construction sites inspected by any regulatory inspection agency.

[English]

Mr. Ron Middleton: Absolutely. We routinely have inspectors appear on our sites. In fact, navigable water protection officers have appeared on our sites periodically, although they have often appeared in the company of fisheries officers as well, and now perhaps I understand why that was the case.

[Translation]

Mr. Mario Laframboise: As far as the application of the Navigable Waters Protection Act is concerned, could you give us some examples of processing delays that would not be acceptable considering the type of work you would undertake?

[English]

Mr. Ron Middleton: Yes, I do. I can name a couple off the top of my head, if you like. One is the Athabasca River bridge near Fort McMurray, which we are just getting under way. I believe that the approval took in the order of two years.

There is another one we're working with right now, the Western Headworks Weir. We are in Calgary and are actually proposing to modify it to make it safer for navigation. It's currently a drowning hazard, and we are proposing to modify it to make it safe for boaters. That is another one that's been in the works for two years, and we are desperately trying to go to tender right now.

The Chair: Mr. Masse.

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

Thank you, Mr. Middleton, for appearing today.

Going through your recommendations, I have some questions based upon what you submitted, some clarification.

On number three you are suggesting to drop the time completion and start dates for the project. Six months to three years is not appropriate, in your submission.

The concern I would have, and maybe you can answer this, is that a permit could be issued and two and a half years later nothing happens with it. Perhaps the conditions have changed during that time. Why should there not be a process to go through again, or have a review, or something different?

My concern would be that if the work didn't get done for a long time, things change.

• (1140)

Mr. Ron Middleton: I thoroughly understand that. We wouldn't object even to having a clause that says "within such time as the minister may require".

The inclusion of those arbitrary dates that end up being the default on approvals is what causes us the problem. Certainly we appreciate that approvals may become stale-dated, but as I say, it's often the case that the start date can be problematic for us. Through the

negotiation process with Transport Canada, we can affix dates that are mutually acceptable.

Mr. Brian Masse: Okay. That was helpful.

With regard to number seven, you are requesting the deletion of advertising, noting that it's expensive, ineffective, and outmoded. What types of advertising requirements are there right now? Maybe you can refresh us on that.

Mr. Ron Middleton: What's required now is to file plans at the land titles office or its equivalent, which in many cases, including Alberta, doesn't really exist any more, since we've gone to electronic registries. It's to advertise in the *Canada Gazette*, which I don't think is on the standard reading list for most Canadians, and advertise in two local newspapers.

That may or may not be appropriate, because again, as I think Transport Canada has noted, if you're dealing with a location where there are a lot of cottagers, for example, or something like that, or if you're advertising in the winter, they probably won't see the local papers.

Advertising appropriate to the project we think would be better.

Mr. Brian Masse: Right. But then they wouldn't get anything at all under your proposal, so if it wasn't there—

Mr. Ron Middleton: I think it might be a case of advertising in such manner as the minister may require. Something of that sort would be quite acceptable to us.

Mr. Brian Masse: You're giving a lot of power and discretion to the minister. The minister may not want that, either.

Mr. Ron Middleton: We have similar requirements in other legislation. I would point out again that CEAA has its own advertising approach as well, which is normally adequate.

Mr. Brian Masse: Okay.

On number 10, with regard to the fines, I guess what would be concerning is that you're saying it should be a sufficient deterrent for you to demolish the works. The question I would pose is if somebody went ahead with works they were not legally entitled to do and they were demolished, and it had to be done by the government or the municipality for whatever reason, why should the public have to pick up that cost?

Mr. Ron Middleton: The public should not have to pick up that cost. I think the act allows them to recover the cost, and hopefully the municipality or whoever is involved would come good. I know that the current fines have not been used significantly, and perhaps that's because they're so low that Transport Canada doesn't feel it's worth pursuing.

We don't have a strong feeling about this, but I would point out that there are things, and I shouldn't be saying this from my seat here, under the act that probably should be infractions that aren't. For example, failure to apply under this act to receive an approval is not a violation of the act itself. Under most legislation, it would be.

Mr. Brian Masse: Preventing these things would obviously be better, yet you're open to some type of penalty system but are suggesting this one may not be the most effective.

Mr. Ron Middleton: It's probably not, because the act as it's structured is somewhat outmoded concerning where the penalties are levied. In my view, they are almost post facto, and there should be deterrents to doing the wrong thing in the first place. As it is, the whole order of enforcement doesn't come in until you've done something wrong and they've ordered you to change it and you've refused to do so.

Mr. Brian Masse: You may not be able to answer this, and it might be more appropriate for Transport Canada, but it was interesting to hear you say that they don't really apply the fines right now. Their argument is that they're not sufficient to make it work—or that's one of the suggestions.

Of those who aren't compliant with the act, are there particular companies, or is there a particular field that predominates in non-compliance, or is it just in general? I'm wondering whether there are particular types of work or a particular sector causing some of the compliance issues.

• (1145)

Mr. Ron Middleton: In my experience, and I'm not involved in industry end-resource crossings and that sort of thing, probably the biggest issues I see are minor crossings on minor streams, things that would probably more often fall to the municipalities, even, than to us; cases in which they believe that a stream is not used for navigation and that a small culvert crossing or low-level crossing is adequate to meet their traffic needs and is economical and, since nobody paddles here anyway, wonder who the heck cares whether a canoe could theoretically get under it. That's where I see most of the conflicts right now.

Mr. Brian Masse: Would those be ones that are somehow approved by the municipality, or just cases of private individuals going ahead with works that...?

Mr. Ron Middleton: It's more often what I see from the municipalities.

Mr. Brian Masse: Thank you very much for your testimony today, Mr. Middleton.

The Chair: Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Thank you, Mr. Middleton, for coming out.

I apologize for my voice. If I quit, my colleague will take over for me.

Clearly, the amendments we're looking at have a significant impact in rural Canada. I'm from Ontario, and everyone who comes before us talks about the delays, the costs, and the effect on safety. I think you mentioned those also.

I was going to follow up on a question of one of my colleagues, where you developed the map you had. Could you table it for our committee to have as an example for consideration?

Mr. Ron Middleton: I certainly could do that. As well, I have a PowerPoint presentation that shows the criteria used. That might be helpful. I'll provide it to the clerk.

Mr. Bev Shipley: I think that might be helpful.

You talk about the unlawful works that are out there. I'm not so sure we know how many of them there are, but when you come across these and consider how we're going to deal with them, is it strictly going to be around navigable issues, or is there going to be a sort of engineering component of it? Do they get picked up only when something is going to happen in terms of a change or a rebuild?

Mr. Ron Middleton: That's how it's happening now. There have been thoughts in the past of just submitting all the existing ones out there for approval, so that we bring everything up to date. That would bring the entire process, of course, to a grinding halt. Transport Canada could not possibly deal with all of those at once.

In fact, we've been working with them on a case-by-case basis as they have come up for repair, or rebuild, if that is the case: making them lawful and then proceeding with the repairs.

The problem with that, of course, is that any time a municipality or we wish to in theory, say, replace a guard rail on a bridge or something like that, it may require a multi-month or year delay before we are allowed to do that kind of repair, and there may be cases of public safety in the meantime.

Mr. Bev Shipley: I want to go back to an earlier discussion on number 10. I don't know how big a priority this one is, in terms of the fines. Actually you recommend that we aren't making it a priority because it's a maximum of \$5,000 now. I think we've heard a number of times that it's—just what you said—too small because it's just part of business.

My understanding of the act is that there's no cost-recovery capability within the existing act. I may be reading that wrong, but I'd like clarification on that. I think part of that has to be that we can't always go back to the public for some of these penalties.

Mr. Ron Middleton: I may be mistaken, but it was always my belief that if you were ordered to tear something down and refused, and Transport Canada demolished it, it could recover that cost. If that's not the case, that's something I would certainly support.

Mr. Bev Shipley: I'll just wrap up. I think I'll just leave it at that, and I'll turn it over to my colleague. Thank you.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thanks very much for coming today. I appreciate it.

Indeed, it appears we have the overwhelming support of most of the provinces and territories in relation to our study of this act. Not only Alberta, but the Yukon, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Ontario, and Saskatchewan, at this stage, have all given support to you in relation to your presentation. Is that correct?

• (1150)

Mr. Ron Middleton: Correct.

Mr. Brian Jean: Wow. I didn't know those orders of government could get together in all—

Mr. Ron Middleton: Well, in fact we were fortunate, in that there was a Transportation Association of Canada meeting here in Ottawa just a few weeks ago, and that provided the opportunity for all these agencies to get together and to vet the proposition we put on the table. In fact the support was unanimous. I don't think it's a major issue for P.E.I., and Quebec decided to approach the federal government in its own fashion and not as part of a joint submission.

Mr. Brian Jean: Excellent. I was at that meeting, and I have to tell you I was impressed with the background conversations in relation to this particular piece of legislation. There seems to be an overwhelming support for this change that the government is doing.

Have there been any studies in relation to either the cost of the current situation or the timeframe allocated? I know Transport Canada indicated there is an eleven-month delay or an eleven-month average in some of these applications as a result of this act. Has there been any study on what the cost is to taxpayers? Ultimately, that's who pays the final bill. It must be in the billions of dollars.

Mr. Ron Middleton: I'm sure it is, but no, I don't have real numbers on that. You know the kinds of construction inflation costs we've been having, particularly in Alberta, in recent years. A delay of six months could easily add 20% to the cost of a project.

Mr. Brian Jean: Well, that's my next question. The Athabasca Bridge in Fort McMurray, my constituency, is a five-lane bridge that we've been waiting for. I think the first bridge was put up somewhere around 1963; the second bridge was put up about 1970 or 1972; and now we need to replace those bridges. Indeed, the season to build is somewhere in the neighbourhood of five months a year. Now we have backlogs sometimes of six or seven hours for people to get home from work because there's been an accident or whatever the case may be.

My understanding is that this particular piece of legislation is one of the major holdups in relation to that bridge being approved and actually going ahead. Is that correct?

Mr. Ron Middleton: It's certainly one of the holdups. To be fair, it wasn't the only one.

An hon. member: It's the only one in his riding.

Mr. Brian Jean: In my riding, but 6% of the gross domestic product of the country, I might add.

An hon. member: I've got 40% in mine.

Mr. Brian Jean: Indeed.

Thank you very much for your time today, sir. Is there anything else you'd like to put forward as a recommendation for this committee to deal with on this particular act?

Mr. Ron Middleton: No. I would just like to emphasize that any relief we can get in short order would be greatly appreciated.

The Chair: Ms. Hall Findlay.

Ms. Martha Hall Findlay (Willowdale, Lib.): Thank you.

My own welcome to you, and thank you for being here.

I actually have a follow-up question, out of curiosity. I wanted to ask about the cost savings and whether anybody has done a full analysis of the situation we have now, not just the delays but the

overall cost of having to comply with this and what the savings might be.

Given the repeated discussions we're having, and should be having more of, on infrastructure and infrastructure needs and the costs at the different levels of government, I was wondering if there was any analysis of the cost savings these measures might see—or conversely, the cost of having to comply so far.

The other question is I was actually curious if this is only one of a number of acts that have caused problems for the bridge in Fort McMurray. Could you just shed some light on the other main challenges?

Mr. Ron Middleton: I can.

To answer your first question, I wish I could give you comprehensive numbers. I cannot. This sort of thing is difficult to sort out. In my position, I am often asked by my engineering friends how much all of this environmental and regulatory stuff is costing us. It's difficult to answer that question. In most cases, accommodating navigation is not a problem. It automatically happens. We are trying to accommodate flood flows and similar circumstances, and engineers are personally liable for any public hazards they create. So it's not as if these things would be totally ignored if there were no act.

What was the second question?

Ms. Martha Hall Findlay: I asked whether this act was only one of many that caused problems for the bridge at Fort McMurray.

Mr. Ron Middleton: I would suggest that Transport Canada and all provincial and federal government agencies are bound up. One of the other issues in Fort McMurray was that of aboriginal consultation. First nations consultation is a shifting legal ground. Nobody is quite sure what needs to be done. As a result, I think we had three or four separate consultations on the same project.

● (1155)

Ms. Martha Hall Findlay: I was trying to allocate the level of responsibility that this has for the stoppage, but that's helpful.

Thank you.

The Chair: Monsieur Carrier.

[Translation]

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

Welcome, Mr. Middleton. I am glad to meet a representative of the Government of Alberta.

Every province of Canada try their best to make sure that their regulations are as clear as possible. You brought to our attention that the major problem was delays due to the approval of works being built on waterways. The objective of our present study is to clarify various cases where legislation applies, in order to at least be able to find a quicker way to solve real problems that come under the purview of the Department.

I would like in particular to stress recommendation 6 which goes like this:

Replace the term "bridge" with "work" in Section 8 and replace the date "May 17, 1882" with "January 1, 1995".

Section 8 is then an exemption to the whole approval rule pertaining to bridges built before this act was adopted. One can easily understand this exemption, but the amendment you propose means more or less that the present act and the obligations it conveys would not apply to anything built before 1995. It seems to me that this exemption is a significant change.

I would like to hear what you have to say about that.

[English]

Mr. Ron Middleton: Yes, it is a significant change. We are suggesting not to exempt works that were created before the act was passed, but rather to exempt works created before the act was significantly applied.

In fact, the vast majority of works on waterways that would today be regulated were effectively unregulated for the best part of a hundred years. This does not seem to have created a great deal of difficulty. In our view, we add a lot of time to routine repair and maintenance works by requiring them to be made lawful under the act before they can go ahead.

I point out that there are still options within the act, safeguards that would allow Transport Canada to identify hazards and have us deal with them during repairs or rebuilding. I think this would be a way of eliminating a great deal of paperwork that is providing very little good for us today.

[Translation]

Mr. Robert Carrier: Rather than using the word "work", which is very general and which would allow anything built up until now, don't you think that it would have been more appropriate to replace the exemption pertaining to the word "bridge" by more specific works having a more obvious importance? Whether they be bridges, dams or weirs.

You mentioned that you discovered, while doing a review on navigation obstructions in 2004, that the vast majority of those were built by the Government of Canada. It is rather surprising to realize that the Government failed to comply with the act they are now reviewing. However, you mentioned this:

If you believe there is a need to have a least a cursory review of works built without an approval, amending Section 6(4)[...]

Don't you think that we could ask the Department to be stricter in the reviews they do? As long as we add precisions to the act, why don't we make mandatory a review of the works that did not get previous approval from our own Government?

• (1200)

[English]

Mr. Ron Middleton: You asked two questions. Certainly in generalizing that phrase to deal with works rather than simply bridges, we have included everything that was built prior to 1995. I acknowledge that. Perhaps my friends in Transport Canada can better advise as to whether there are a significant number of works as opposed to dams, bridges, and that sort of thing out there that do pose a difficulty that we would allow to slip through under this.

Under the second part of your question, I'm not entirely certain what we're getting at here. Certainly if you have difficulty with our first suggestion, something that would allow a cursory review by Transport Canada of every work when we replace it, without the need to undergo advertising, and so on, would be much more palatable than the way the act currently sits. I do not think it's feasible for Transport Canada to look at everything that is out there. First, they don't know, because they weren't approved; and second, there are an awful lot of them.

[Translation]

Mr. Robert Carrier: Shouldn't we be stricter and ask for a complete review by the Department of works already approved, rather than using imprecise phrases like "If you believe there is a need".

Do you think we should accept all the works already built, even though they do not comply with the legislation?

[English]

Mr. Ron Middleton: Not necessarily. I would in fact like to see Transport Canada's staff be allowed to have more time in the field actually dealing with waterways and boating clubs and folks like that, rather than processing applications in an outmoded approvals process. Right now, I feel that they are buried under paper, and it's unfortunate that they do not spend more time looking at existing works.

As I said, we have a list of hazards and instructions that were identified, and perhaps we should set those up, that sort of thing, on a priority basis. So I certainly agree that there should be a mechanism to allow them and to encourage them to be proactive.

[Translation]

Mr. Robert Carrier: Could you make this list available to committee members?

[English]

Mr. Ron Middleton: I certainly could.

The Chair: Mr. Fast.

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

Mr. Middleton, I'd like to continue on that line of questioning regarding the grandfathering of certain works. You've suggested that you'd like to see the removal of the requirement for approvals prior to undertaking repairs and reconstruction. I don't have any difficulty with the repairs, especially if they're cosmetic. There's reference to a railing being installed. That makes sense. That should be done without a formal approval process.

However, reconstruction is a different matter. I can imagine that, with today's design standards, if you were going to replace an existing structure such as a bridge, the footprint might not be the same any more, or the navigability characteristics might not be the same.

It seems to me that if the focus of the act right now is to make sure we protect navigation, and if in fact we intend to continue with that focus, why would we not have some kind of involvement by the government when it comes to reconstruction, especially if there's a change in the characteristics of that structure?

Mr. Ron Middleton: Let me make it clear. The wording I latched onto is the wording that is in the act right now. And from the context in the act, “reconstruction” means putting it back the way it was, not modifying it.

In reality, of course, if we were going to make significant investment in a structure, we would probably be, at a minimum, modifying it to modern standards, and possibly replacing it, in which case it would be caught under the act.

We get into the problem of semantics when we ask when repairs stop and reconstruction begins, which is always the case. Where does maintenance stop and repair begin? Those are the kinds of things we are always caught in. Certainly I agree with you, in principle, that if we are going to make a major change or invest significant dollars in a structure, that's the time to look at any changes that we might make to better accommodate navigation, fish passage, and all of those kinds of things.

● (1205)

Mr. Ed Fast: Thank you for that clarification.

I'd like to talk a little bit about the fines you'd like to see either removed or left as they are. I think you admitted right here earlier that perhaps the fines aren't significant enough to provide the kind of deterrent to have municipalities and provincial governments and other authorities comply with the law.

We've just finished a study of rail safety in Canada, and we reviewed a report by Doug Lewis, which was prepared for the government. One of the strong recommendations in that report is that there be a system of administrative monetary penalties as sort of a medium approach to discipline. In that system right now, you have a heavy-handed approach under which you can revoke a licence, and then you have a very light approach, which really has very little effect.

I would apply the same reasoning to navigable waterways legislation. We want to have some moderate form of discipline or penalization that actually allows government to step in and make sure that authorities—municipal authorities, provincial authorities—actually comply with the law.

So I would raise the issue of a major construction work that is undertaken, which might be three-quarters finished, and which might represent an investment of many millions of dollars by taxpayers, but for which the taxpayers themselves have no say in the process of getting approvals. Let's say that an authority didn't get the required approvals, and now the only remedy is demolition. I would suggest to you that's probably, in some cases, a remedy too extreme to be realistic. There has to be some other way of making that authority—that municipal council—accountable for that poor decision, one that would not impose millions of dollars of costs to taxpayers but that would still raise accountability, and make the community aware of a failure to comply. Would you agree with me?

Mr. Ron Middleton: I probably would agree with you. I find it, of course, a little amusing, in that most of us who are involved in the business of trying to get things built recognize that there are many approvals that we have to get and many opportunities for the public to express their opinion on a given project.

However, with respect to this act, I would favour something that would kick in well in advance of our getting to the stage of a project, whether wholly or partially completed, that would be unacceptable. And as a lawyer pointed out to me once before, failure to apply under this act is not a violation of the act itself, whereas if that were something that was dealt with, that might well ensure that we would deal with things up front.

Certainly for anything that involves significant federal funding, as many transportation projects do, kick in the entire CEAA process, ensure adequate consultation at the beginning and middle of a project, and ensure public comment on the project.

Mr. Ed Fast: In my experience as a municipal councillor before my current role here in Ottawa, I heard a lot of residents come to council saying, “Listen, you're driving us to a point where it's easier for us to ask for forgiveness than to ask for permission”. And I'd hate to see that standard applied when we're trying to approve public works of a significant nature across Canada.

It seems to me—and I think I'm supported by other members at this committee—that a system of fines, provided they're substantial enough to be a deterrent, is something we'd still want to leave in the legislation to make sure we don't have to just use the severest form of penalty, which is demolition.

● (1210)

Mr. Ron Middleton: I don't disagree. Certainly with respect to the other regulatory legislation we're working under, substantial fines, jail sentence, personal liability, and creative sentencing are all standard, as well as making the law binding on the crown.

The Chair: Is there anyone else? I can open the floor up again for questions. Are we satisfied? All right.

We thank you very much for your presentation. I think Mr. Volpe summed it up: it was very thorough and very informative. Thank you, Mr. Middleton.

Mr. Ron Middleton: I express our appreciation for being allowed to come to speak to you about this. Good luck with your deliberations.

The Chair: Thank you.

As a heads-up for the committee, on Thursday we'll be doing main estimates with the minister. Once again I remind you to have your hair combed and your smile on right, because it will be televised. It will be held in Room 269.

We have two meetings left after that before the break, on May 13 and May 15. I would like the committee to revert to the railway study, with the hope of concluding it on the final Thursday.

Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Will we deal with the railway study on the 13th?

The Chair: Yes, that will be on the 13th, and on the 15th if necessary.

Mr. Don Bell: I noted in the media today the issue from the Auditor General on air transportation safety. The Auditor General's report is coming out, and there are criticisms of the application and monitoring of safety management systems. I wonder if that's an issue we should discuss at some point, because it's in our purview here, obviously.

The Chair: I'd like to reserve the last 15 or 20 minutes of that Thursday meeting to determine our future business. Obviously one

topic will be navigable waters, but what's next? I suspect there may be some legislation coming forward too.

Is that okay?

Mr. Don Bell: Okay.

The Chair: The meeting is adjourned.

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