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

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**EVIDENCE**

**Tuesday, October 17, 2017**

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**Chair**

**The Honourable Judy A. Sgro**



## Standing Committee on Transport, Infrastructure and Communities

Tuesday, October 17, 2017

• (1525)

[English]

**The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)):** I call to order this meeting of the Standing Committee on Transport, Infrastructure and Communities in the 42nd Parliament. Pursuant to the order of reference of Wednesday, September 20, 2017, we proceed with consideration of Bill S-2, an act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another act.

We have from the department today, as witnesses, Kim Benjamin, Donald Roussel, Alain Langlois, and Marie-France Taschereau.

Welcome. Thank you so much. It's nice to see all of you again.

Pursuant to Standing Order 75, consideration of clause 1 is postponed until the chair calls clause 2. We can start that discussion now.

Mr. Lobb, go ahead.

**Mr. Ben Lobb (Huron—Bruce, CPC):** Madam Chair, I wonder if the legislative clerk could tell us which, if any, of the amendments are out of order at this time. Are any of the amendments out of order?

**The Chair:** We have to wait for that. As the amendments are introduced, the legislative clerk.... There is one that will be ruled out of order.

**Mr. Ben Lobb:** I wonder, as well, if you'd indulge me in asking one of the Liberals, Mr. Fraser, a question. If he has taken a look at all the amendments submitted by the opposition, I was wondering whether there are any amendments that the Liberals would be supporting or if they would be voting against them all.

**Mr. Sean Fraser (Central Nova, Lib.):** I find it odd that the question is posed to me specifically. I don't know which amendments are going to be moved. I think the ordinary course is to go through motions when they are moved and debated, deal with them in that order, offer commentary and discussion on them at that time, and take feedback from the officials as well.

Madam Chair, I think proceeding under the ordinary course is probably the right way to go.

**The Chair:** Thank you.

Mr. Chong, go ahead.

**Hon. Michael Chong (Wellington—Halton Hills, CPC):** Thank you, Madam Chair.

I think what my colleague from Huron-Bruce is trying to do, in the interest of dealing with this legislation expeditiously, is make our use of time efficacious and avoid having to go through a whole bunch of amendments if the outcome is preordained.

I would suggest that we suspend for five minutes, if it is the will of the committee, and have quick, informal discussions about which amendments will be truly considered and which ones will have preordained outcomes, so that we don't have to go through amendments that we know are going to be defeated. We could possibly deal with this bill expeditiously before the votes take place in about an hour and a half.

• (1530)

**The Chair:** I think we can probably deal with it expeditiously by calling out each clause, which is the proper way to do it. Anyone who has moved an amendment has the right to speak to that amendment.

I think we are all aware that at 5:15 the bells will go off and that we'd like to get this completed today if possible, but we are dealing with legislation and we have to do it the way it is required of us to do it.

Mr. Badawey, go ahead.

**Mr. Vance Badawey (Niagara Centre, Lib.):** Thank you, Madam Chair.

I would agree. With respect—and in respect—not only to the members of the committee, but also to those who may be watching it on television, to go over each amendment.... As well, there may be dialogue that might be initiated based on each amendment. Whether it is supported or not supported, we can have that dialogue. Again, in respect and with respect to those who are watching on television, the due course that we always follow should be followed through with.

**The Chair:** Thank you.

Is there any further discussion?

(Clauses 2 to 4 inclusive agreed to)

(On clause 5)

**The Chair:** Mrs. Block, would you like to speak to that, please?

**Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC):** Thank you very much, Madam Chair.

I think the amendment we have put forward was an amendment recommended by the Canadian Vehicle Manufacturers' Association.

I'll just quickly summarize their rationale. This amendment would put the onus on the minister to have a legitimate suspicion—i.e., evidence that a problem exists—before he or she can exercise the power to order tests. It would also restrict the minister's power to order tests if he or she suspects a defect or non-compliance. It would restrict the ordering of tests to that, rather than having to prove compliance without a reason for ordering the tests. Finally, it would instruct the minister to consult with the manufacturer, before using his or her powers, to determine if the tests already exist.

**The Chair:** We ask the department to comment.

**Ms. Kim Benjamin (Director General, Road Safety and Motor Vehicle Regulation, Department of Transport):** The reason we put forward this particular clause is that there may be times when we are not certain whether or not there is a defect or a non-compliance and need to study it to find out more. We are concerned about spending a lot of time, in these circumstances, debating whether there is enough evidence to conduct the search or to ask for the studies.

I'll give you one example in which this might have been of benefit for us. That was during the Takata issue a few years ago, when there was a defect in the U.S. but we weren't certain whether there might be an issue in Canada. At that point we asked manufacturers whether they would be willing to conduct studies and asked what information they had.

This would have been a tool. It took a while to get the information we were looking for, and I can't remember whether all the manufacturers complied. It would have been a way of determining much more quickly, however, whether there was an issue in Canada. That's why we've put it in: not to say that we know that there is a defect or that there is non-compliance, but that we believe there is an issue we need to address.

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

Go ahead, Mr. Hardie.

**Mr. Ken Hardie (Fleetwood—Port Kells, Lib.):** I looked on it as an application of the precautionary principle, which is a pretty big point in our fisheries committee as we look at things that might be happening. The idea is that when in doubt, look into it. If a doubt is raised, it's probably good sense to go in and require things to be checked out, rather than leave something unresolved and then end up having a dangerous situation.

**The Chair:** Thank you.

Mr. Aubin is next.

[*Translation*]

**Mr. Robert Aubin (Trois-Rivières, NDP):** Thank you, Madam Chair.

I'd like to ask the member who put forward the amendment a question.

You know my penchant for precision. The amendment states “if the Minister has evidence”, but the French version refers to evidence in the plural, “*éléments de preuve*”. First, that means the minister must have more than one piece of evidence in order for the provision to apply. Second, what does “evidence” mean? It isn't defined anywhere in the bill.

• (1535)

[*English*]

**The Chair:** Go ahead, Ms. Block.

**Mrs. Kelly Block:** I'll follow up with one question to the departmental officials as well.

In the example you gave, in which it was obvious that there was a defect in the United States but we weren't sure that there was something happening in Canada, would that not have met the criteria of the amendment, which states that if the minister has a legitimate suspicion...? I would suggest that if something is happening in the States and we're not sure, but there is enough evidence that there could be something, if this bill were amended in the way the associations suggested, the minister would fall within what's in the act and be able to say there was evidence there and ask them to do tests rather than just order them.

I would like a bit of follow-up on that idea.

**Ms. Kim Benjamin:** I guess the issue comes down to how much evidence is required in order to be “evidence”. The specific issue with Takata was in hot, sustainedly humid climates that we don't have in Canada. Whether or not there was an issue in Canada, however, was something that at the time the public was very worried about, and we wanted to find out whether there was an issue. If there's a question as to how much evidence is enough to be able to ask for this work to be done or to order this work to be done, then you start to spend a lot of time debating whether you have enough proof to ask for the work to be done.

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

**Mr. Ben Lobb:** I have some questions. In the example you're talking about, was it your experience when you went to the companies that they responded, that they were forthright, that they were open to showing you what they had done?

**Ms. Kim Benjamin:** I don't have all of the results of what they did, but not all the companies had conducted studies at that point. It was very much an unlevel playing field as to what information was out there. At that time, all we could ask was for them to give us what they had. We didn't have an ability to ask that they please conduct a study in this type of climate or this type of situation to see whether that condition existed here.

**The Chair:** Okay, Mr. Lobb. Is there any further discussion?

I shall put the question on amendment CPC-1.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 5 agreed to)

(On clause 6)

**The Chair:** We are on clause 6 and amendment NDP-1.

We have amendments NDP-1 and NDP-2. Mr. Aubin, you could speak to both of them together or individually. It's however you would like to do it.

[*Translation*]

**Mr. Robert Aubin:** I can speak to both of them, one after the other, but I assume we will be voting on them separately.

Is that correct? Very good.

The first amendment seeks to tighten up the conditions in which the minister may use the power to exempt a company from complying with the regulatory standards. The amendment would make the language more specific so that the provision would read as follows:

(b) new kinds of vehicles equipped with safety features that are equivalent to or superior to....

However, in the past, new types of safety features could have just as easily been tested without necessarily being proven. What we are saying, then, is that the safety features should at least meet the prescribed standards. If they exceed them, that's fine too.

Why should we bother with such an amendment? I would remind everyone that, in the Auditor General's most recent report on Transport Canada's oversight of passenger vehicle safety, he indicated that the department "did not develop motor vehicle safety standards to respond to emerging risks and issues in a timely manner". More specifically, the Auditor General found that Transport Canada "did not have complete collision and injury data to inform decisions". We want there to be as few loopholes as possible.

Now I'll turn to the second amendment, which is quite significant, because it is going to come up numerous times. I think the first vote on NDP amendment 2 will be pretty important. First, it introduces a deadline, and, second, it amends a two-letter word that changes everything. We are proposing that "or" be replaced by "and".

As regards the time frame, we are proposing that "as soon as feasible", a somewhat vague time limit, be replaced by "within two days after". That would impose a specific deadline by which the information would have to be published. With our amendment, clause 6 of the bill would read as follows:

(3) Within two days after the exemption order is granted, the Minister shall publish it on the Internet site of the Department of Transport and make it available by any other means that the Minister considers appropriate.

Currently, clause 6 states that the exemption order "be published through the Internet or by any other means".

With the word "or", the clause does not necessarily mean that additional means will be used. It does not mean the Internet site in addition to other possible means. The Internet site could disappear completely, in favour of other means of communication. Therefore, we feel it's important that Transport Canada's website serve as the first resource for information. That is imperative if we want to make sure automobile owners, especially second owners—who are often harder to reach, as we heard from numerous witnesses—always know where to go for information and develop that reflex.

The deadline of two days is negotiable if the officials don't think it would be possible to respect. However, the priority is to ensure that all of the minister's decisions are published within a prescribed time frame on Transport Canada's website and other sites or by any other means that the minister considers appropriate. The minister should be free to publish the information on social media or in traditional media should an assessment of the specific circumstances point to such a need.

Nevertheless, all the information should, at least, be available on Transport Canada's website. Every time we propose this amendment, the reason is the same: so that consumers are always able to find the information they need. For instance, if they want to find out whether the used car they purchased is under a recall ordered by the minister, they can check Transport Canada's website, knowing that they will find the information there. The current language in clause 6 does not guarantee that.

• (1540)

[English]

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

Would the department like to comment on NDP-1 and NDP-2?

**Ms. Kim Benjamin:** To start with the first issue, with the exemption from the standards, the purpose of this particular clause is to allow us to have the flexibility to allow new technologies to come in. We have a proposed subsection, captioned "Conditions for granting exemption", that would fall after these proposed amendments. It says it

must only be granted...if the exemption would not substantially diminish the overall safety performance

of the vehicle. There is, then, that safety test.

One concern I have with the way the wording is here is that it may not be decision that should be based on an existing standard. We're dealing with the unknown unknowns as we move forward.

I'll put forward one example that we could potentially come across as we move forward. We may have a vehicle brought forward for which there was no steering wheel, but the collision avoidance systems within the vehicle were so significant that you would not need a steering wheel. In the way this amendment is written, however, since that configuration would not meet the steering wheel safety standard, we wouldn't be able to allow it in.

The ideal is that we want to look at the deal holistically and not just say that you must meet every standard. There could be some standards that provide a greater level of safety than other standards. If I had a standard whereby something better might be in the airbags but the labelling wasn't as strong, the way this is worded, I'd have to do it standard by standard. What we were trying to accomplish when we wrote the original wording was to look at it holistically: we would assess every standard, but there would be an opportunity to weigh something against it if the overall safety for the vehicle was not affected.

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

**Mr. Sean Fraser:** Thank you very much for that explanation. I'll try to unpack a couple of different topics that come up.

Thank you, Monsieur Aubin, for laying out the two amendments. I accept the explanation you just delivered, and for that reason, I think amendment NDP-1 defeats part of the purpose of the provision.

On amendment NDP-2, however, and with an eye to Mr. Lobb's point about being efficient with our time, I have an issue with the "two days" component. I think that for a number of the various amendments you propose throughout, there are circumstances in which two days would in many cases be practical but in many other cases might not be. I'm curious as to whether we could get comment on the "two days" standard.

You laid out the difference between "or" and "and" in the legislation right now. One thing I'm interested in is whether there are circumstances in which it would not make sense to post on the Department of Transport website the kinds of orders that Monsieur Aubin has contemplated in this legislation, or is that something that will happen all the time anyway, in which case it might make sense?

• (1545)

**Ms. Kim Benjamin:** There are two issues I would like to raise on that aspect. One is that the amendment specifically notes the Transport Canada website. For example, when we post our defects and recalls right now, we also go through the "Health Risks and Safety" tabs on the government website, so that all recalls go through one site. Restricting it specifically to the Transport Canada website might cause some issues as we move forward.

The other thing we're looking at is that we've recently had to look at how to update the legislation to make it more modern, to take out the fact that we no longer want to have to post something in the newspaper or have mail-outs. That method of delivering the information has become archaic, and as we're moving forward, the method may become more archaic.

Right now, yes, the intent would be to post it on the website. Would that still be the intent in a few years, or have social media taken over to the point that websites are becoming less usable?

Right now, we always post our information. We had more than 630 recalls last year. We normally post those. We give ourselves 72 hours to do the translation and make sure it's web-friendly, but we generally have it posted within 36 hours. We have, then, a history of posting.

**Mr. Sean Fraser:** As a follow-up, you mentioned that there might be some circumstances in which you would post on another website. Is there any circumstance in which it is not posted today on some Government of Canada website?

**Ms. Kim Benjamin:** No.

**Mr. Sean Fraser:** Okay.

**The Chair:** Mr. Hardie is next, and then Mr. Aubin.

**Mr. Ken Hardie:** Concerning the example you gave of perhaps a shift from a website to social media, as a communication person I would have a problem with that specifically, simply because you have a routine such that people know where to look and can reliably go to a website and find the information there, and not go to Transport Canada one day, Health Canada the next. Sure, put it on Health Canada, but be consistent. Always putting it on the Transport Canada site is something that I think makes sense.

I can certainly support Mr. Aubin's "and" versus the "or" on that basis.

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

[*Translation*]

**Mr. Robert Aubin:** I have two things to say.

As for the first amendment, I quite appreciate the example that was given because it is precisely in line with what we want. What I heard was that it would be acceptable if it did not significantly reduce the safety standards. Therefore, a new technology could be accepted if it did not significantly reduce the safety standards, but it is already reducing them.

We believe that the basic standard is the one that currently exists. If the new technology being proposed satisfies that basic standard or exceeds our expectations, we would be fine with that. We aren't against apple pie, after all.

Regarding the second amendment, I think the "and" solves all the problems. It would make it mandatory to post the information on Transport Canada's website and on any other platform the minister deems appropriate.

[*English*]

**The Chair:** Next is Mr. Chong, and then Mr. Hardie.

**Hon. Michael Chong:** To clarify, Madame Chair, I thought we had agreed that we were going to go in order. We're talking about the third motion now, which I don't believe is actually in front of us, rather than the second motion.

That being said, since we're on the topic of the third motion—

**The Chair:** We're really not talking about the third motion. We're trying to keep our comments to the first and the second. We're trying to keep them there. We could go to the third, but I think it's not fair to Mr. Aubin. He's moved one and two.

**Hon. Michael Chong:** I wanted to build on what Mr. Fraser and Mr. Hardie had said about the third motion.

**The Chair:** If you just hold it for a minute, we will be there.

Is there any further comment?

Did you want to comment on one or two?

**Hon. Michael Chong:** I will just say that before Mr. Aubin moves the third motion, which is referenced by 9144802, I have a suggestion that may help him move that motion in a way that would get the support of all committee members.

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

• (1550)

**Mr. Ken Hardie:** With respect to 9151588, I think the issue here is that to compare standards, you have to know the performance of the things that you are comparing. It's difficult to know that until you actually put the new thing into practice of some sort and test it out. Would we put a car without a steering wheel on a public road? No, probably not.

I think that in order to make a proper standards comparison, you have to have standards established. However, the nature of these things that are being introduced is such that there are no standards yet, which makes that proposition somewhat untenable.

**The Chair:** Mr. Aubin is next, and then we are going to call for a vote.

[Translation]

**Mr. Robert Aubin:** I can understand that a new technology doesn't have established standards, but it still has to meet existing performance standards. If a new car is equipped with a new braking system, the standards governing braking distance in relation to vehicle speed remain the same. The new vehicle will be expected to stop within or under the prescribed distance, but not above it. That's the purpose of the amendment.

I realize that all new technologies can't come with established standards, as we would like, but they, at least, have to satisfy the existing standards.

[English]

**The Chair:** All those in favour of NDP-1, please raise your hands.

All those opposed, please indicate.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Does anyone want to speak further to NDP-2?

**Mr. Sean Fraser:** I think Mr. Chong maybe—

**The Chair:** You referenced the third motion.

**Hon. Michael Chong:** Yes.

On NDP-2, before Monsieur Aubin moves this amendment, may I suggest that if he strikes the words “on the Internet site of the Department of Transport”, that may make the motion more palatable for all the members on this committee to vote for.

I support the motion as it's currently worded, but I sense that other members on the committee may not support it because it's prescribing something very specific that may not exist in 10 years, as a result of the development of social media.

[Translation]

I propose removing the words “on the Internet site of the Department of Transport”. That way, the other committee members might support your amendment.

[English]

I heard clearly from officials here that normally they publish within about 36 hours, so to me two days, which is 48 hours, seems entirely reasonable.

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

**Mr. Ken Hardie:** We have heard that two days may be impractical. That's what I've heard from staff.

I could certainly support the change of just simply replacing the word “or” with “and”, and that would make sure that something reliable is always happening—i.e., it would always be on Transport Canada's website—and whatever other channel was available, including social media, if necessary, to make sure that it reached the proper number of eyes.

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

[Translation]

**Mr. Robert Aubin:** Correct me if I'm wrong, but I believe I heard someone say that 36 hours was doable. I want to be a team player and plan for unforeseen eventualities, so I'm happy to set the time

limit at three or four days; I'm not adamant that it be two days. The idea behind the two-day deadline was to ensure the legislation specified a prescribed time limit, as opposed to the vague reference “as soon as feasible”, which I think is unacceptable. If everyone could agree on a three- or four-day time limit, I wouldn't insist that it be two days. As for the “and”, I think we've discussed it enough to understand one another.

Mr. Chong, unless I'm mistaken, you're suggesting that I remove the words “on the Internet site of the Department of Transport” from my amendment.

**Hon. Michael Chong:** Yes, because members have reservations about that language. The officials said communication methods can change a lot. In 10 years, there may not be an Internet site.

• (1555)

**Mr. Robert Aubin:** I hope that, in 10 years' time, we'll have had a chance to update the legislation. Again, I would point out that, even if posting the information on Transport Canada's website became an outdated practice, which I doubt, all other means of communicating the information would still be possible thanks to the word “and”.

I wouldn't remove those words because they describe the first tool the department has to communicate the information. We are trying to make sure that consumers always have at least one safe place, one that doesn't change, where they can find the information in a timely manner. Whether the time frame is two, three, or four days is negotiable.

[English]

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

**Mr. Ben Lobb:** Mr. Aubin is right on the money here. We can have a discussion about two days or three days or four days, but we are talking about conditions for granting an exemption, so the department and the government owe it to Canadians to at least have it published. In the wording here it says “as soon as feasible”, but probably the politicians will be out taking their photo ops whenever they are testing these vehicles, so it will be within a few days of this. If it is two days or three days or whatever we can agree to, and if there is a friendly amendment from the Liberals on this, I don't think it's unreasonable, because what we're talking about are the conditions under which you would grant an exemption.

With regard to being responsible to Canadians, the word “feasible” can be interpreted many different ways. We'll assume that the lead-up to the granting of the exemption would have had a long lead time, so all the information, the facts therein, would be well established, and it would be a condition of granting an exemption that it be published in an appropriate site, which in 2017 is on the website.

I'd love to hear if the Liberals are willing to accept the time requirement as is or if they would like to propose a friendly amendment to make it three days, but it seems to me it is a little irresponsible to leave “feasible” in as the time requirement.

**The Chair:** I'm not hearing anyone move a subamendment.

**Mr. Ben Lobb:** The reason for that, Chair, is I would ask the Liberals to do it because they have the majority on the committee, and from the onset they wanted to work through this process by doing each one bit by bit, amendment by amendment. That's why I'm asking them to propose the friendly amendment, because if I amend Mr. Aubin's amendment to three days, they might say that's not enough and they need four days. I just thought we'd get it from them right from the beginning.

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

**Mr. Sean Fraser:** Yes, I still do have a problem with prescribing it generally. We might be creating a solution to a problem that doesn't exist, or at least exists in very limited circumstances.

There are a couple of things that I'd like to confer on with my colleagues. Would it be okay to suspend for one minute to discuss a few of the ideas here?

**The Chair:** Okay. We'll suspend for two minutes.

**Mr. Sean Fraser:** Thank you.

•(1555)

\_\_\_\_\_ (Pause) \_\_\_\_\_

•(1600)

**The Chair:** We are reconvening our meeting. We are back on Bill S-2.

Go ahead, Mr. Fraser.

**Mr. Sean Fraser:** I will pick up where we left off. I still don't like to prescribe the timeline. Changing "and" to "or" so that it goes on the Internet in every instance is fine.

I have a little bit of hesitation to specifically say the Department of Transport website, for two reasons. One was the testimony we heard from Ms. Benjamin about how sometimes there's already a way we collect it under a different department's website. Also, I think government websites are, quite frankly, often terrible. I have grown up in a generation that has seen good websites and bad websites. Prescribing content for a specific website is something I'm very hesitant about.

On the amendment that you've proposed, if we want to make it mandatory that it goes on the Internet, I have no problem. I can't support setting a prescribed timeline, because I think that in some situations the timeline might not make sense. That's where my head is at. If you're interested, I would entertain a friendly amendment to modify the original text and replace "or" with "and", but the two-day criterion I can't support.

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

**Mr. Ben Lobb:** I think Mr. Fraser is incorrect in his assessment on the time frame, because it isn't as though they drop it on them one day and the department finds out about the whole project and then two days later is forced to do it. It could take two years to work towards getting an exemption to test on a road.

I don't think we're asking a lot of the department to publish a year's worth of work, two years' worth of work, two days after they decide to grant the exemption. I don't think that's too onerous for the department. They may need three days or four days, but to put "feasible"....

I don't see what we're afraid of here. This isn't a snap decision. These are long term, so why not make the department accountable to do it? If they're good enough to grant the exemption, how can they not be good enough to put on the website to inform people about it?

By the way, if Google or Amazon or Tesla or any of the other companies has one of these vehicles, they're going to test it. They're probably going to do an announcement of the kind they did in the City of Ottawa a couple of weeks ago, so there could be a press announcement, a public announcement, and there's a chance it would not even be on the website.

I don't know why you wouldn't have it on the website. Do your due diligence and be responsible to Canadians.

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

Mr. Aubin is next.

[*Translation*]

**Mr. Robert Aubin:** I'd like to thank Mr. Lobb for making the point I was going to make. I'll take less time now.

I really can't understand this concern. Even the department officials told us that a 36-hour publication deadline was realistic. In rare cases, it might take a bit longer, but we don't have any examples in which that time frame couldn't be met. We're in the process of inventing something that doesn't exist simply out of fear of publishing information about a completed process. On that, I agree with Mr. Lobb. The goal isn't to buy more time within the process, because there is ample time for the decision to be reached. The goal, rather, is to have the decision published within two, three, or four days of its being received. I don't understand why that causes so much concern.

[*English*]

**The Chair:** We have one last speaker, and then I'm going to call the vote.

Go ahead, Mr. Chong.

**Hon. Michael Chong:** Thanks, Madam Chair.

I believe Mr. Fraser proposed a subamendment to strike the words

**The Chair:** He mentioned it, but he didn't move it.

•(1605)

**Mr. Sean Fraser:** I asked if Mr. Aubin wanted to propose a friendly amendment that would capture that, and I'd entertain it. To me it's—

**Hon. Michael Chong:** I'm sorry, Madam Chair; there are no friendly amendments. We're going to work on procedure here—

**The Chair:** He suggested that Mr. Aubin might want to present a change. Mr. Aubin did not do that.

**Hon. Michael Chong:** I understood that we went into recess to get a subamendment from members opposite—

**The Chair:** It was not provided.

**Hon. Michael Chong:** Okay.

**The Chair:** There is no subamendment.

**Hon. Michael Chong:** Then we're still on the main motion.



**The Chair:** We're still on Mr. Aubin's NDP-2 amendment and we are going to vote on it. Is there anything more to be done on NDP-2? No.

Go ahead, Mr. Lobb.

**Mr. Ben Lobb:** I want to go back to my original point at the beginning of the meeting, when I pointed out the farcical nature of what we're doing here.

Mr. Aubin has presented a common sense proposal to the Liberals. I asked them at the beginning if there was anything in here, with all these amendments, that they were interested in. I asked Mr. Fraser because he did a lot of the talking the last time we went through the bill; he was puzzled as to why I was asking him, but that was why, and here we are now, 40 minutes into our meeting.

It is common sense. There is nothing that's screwing up the essence of the bill. This is a common sense amendment to a bill, and here we are. You say we should work through the process, yet when we present something that makes sense, the Liberals, for some reason, say they can't do it. The department sat here and told us that almost every single one gets done within 36 hours. We're saying two days. We're saying, if you don't like two days, make it three days, or four days, or seven days, but you're putting in "feasible".

I'm just pointing out that the way this works is not very good. They should have just told us at the start that they would be voting against all the amendments. We'd already have this thing passed.

There you go. Thank you.

**The Chair:** Thank you, Mr. Lobb. Both you and I have been around here quite a while and are well aware of how things function. Some things pass and some things don't.

(Amendment negatived)

(Clauses 6 and 7 agreed to)

(On clause 8)

**The Chair:** On clause 8, we have amendment NDP-3, moved by Mr. Aubin.

Would you like to speak to that?

[*Translation*]

**Mr. Robert Aubin:** Of course.

If I really wanted to act in bad faith, I would start explaining the amendment by taking five to 10 minutes, easily, to show why replacing "or" with "and" is warranted. I would also reiterate everything I said about making the minister, or the department, publish decisions in a reasonable and prescribed time frame.

Consider the situation of a Canadian who is concerned about automobile safety and thus following a particular issue because, as the owner of a certain model of vehicle, he is directly affected. That Canadian is being told that the minister's decisions will be published on the Internet site as soon as feasible. That's ridiculous, especially since no one can come up with any examples where publication wasn't possible within a certain time frame.

A number of amendments to the bill were made for the sake of consistency. I imagine, then, that, despite the lack of logic, the

Liberals are going to vote against all of these amendments for the sake of consistency.

A very simple idea is being missed here: ensuring that all Canadians can easily find the information they need on the Internet site and any other site the department wishes to use within a prescribed time frame.

I don't know what more I can say about NDP amendment 3, which is being proposed for the exact same reasons as our previous amendment, but which deals with another part of the bill. We are seeking the same change four or five times for the sake of consistency and, I would even say, transparency.

If the officials were able to give me one example, it might help me better understand the members' concern. I can't find a single example where the minister would be justified in not publishing the order once the decision-making process was complete.

I can appreciate the desire to keep the discussions confidential while the process is ongoing. Once it's over, however, it's over. People have a right to the information. If everything the government says about transparency is true, why is it such a problem to publish the decision within two, three, four, or five days? I'm baffled.

• (1610)

[*English*]

**The Chair:** Could we ask the department if they would like to comment?

**Ms. Kim Benjamin:** This particular clause refers back to the process within the legislation that defines the whole order process when there is a preliminary determination that gets posted.

There is information that comes in from the manufacturer as well as from the public. It gets reviewed. A final determination is made, and that is posted. I believe the issue that is being brought up is the time frame associated with that. One thing I would note is that depending on the type of information being posted, there could be different quantities of information and that when we're looking at what we would put up, something for an order power may have more or less information than there might be for the exemption power that we previously discussed.

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

Go ahead, Mr. Fraser.

**Mr. Sean Fraser:** Sure. I suggested this earlier. I appreciate your questions, Mr. Lobb. I don't think prescribing a two-day period or a general period is the right way to go. I respect that you disagree with me on that. I don't believe this is farcical.

There is one change to making the publication on a website mandatory that would have come out of this process. I don't want to suggest that this is some bad-faith exercise that we're making you go through. There are other amendments on which I would like to hear testimony from the department officials. I just wanted to add that, as part of the conversation.

However, your point about the two-day thing is something that I'm not interested in.

**The Chair:** Thank you.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 8 agreed to [See *Minutes of Proceedings*])

(On clause 9)

**The Chair:** Mr. Aubin, on clause 9, you have an amendment here, NDP-4. Would you like to speak to it?

[*Translation*]

**Mr. Robert Aubin:** Madam Chair, this is another amendment that seeks to replace an “or” with an “and” as well as establish a time limit for publication.

I would like to add one thing. In situations like these, which involve automobile safety, can we not all agree that consumer awareness of the facts also puts tremendous pressure on automakers to expedite the process of repairing issues?

By refusing to publish the information within two, three, four, or five days, we are creating conditions where consumers might not find out about the information for six months or, who knows, perhaps even two years.

Let's take the example of the Conflict of Interest and Ethics Commissioner. We have just a few months to write and submit our report, not two years. Things like that do happen, however, even with prescribed deadlines. Imagine what would happen if the legislation did not stipulate a deadline. What a mess it would be.

[*English*]

**The Chair:** Thank you very much, Mr. Aubin.

Would the department like to comment on Mr. Aubin's amendment?

**Ms. Kim Benjamin:** All I would note is that regarding the information that we have now, we do post it as quickly as we can post it. We have not received complaints on this yet.

**The Chair:** Thank you.

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** On NDP-5, Mr. Aubin, would you like to comment?

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair. I hope you're at least taking note of the consistency in my amendments.

I'd like to thank the official who just told us that all the information was posted and that no complaints had been received.

If there haven't been any complaints, then, it seems to me that there's nothing to worry about. Consequently, we could include a requirement in the bill to ensure the information is published in a timely manner, in other words, within two, three, four, or five days. I'll leave that up to my fellow members. I would even be fine with a deadline of seven days, if need be. That would cover situations that never arise and weeks with more than one holiday. I am fine with providing for any eventuality, but I think we are making a mistake by rejecting amendments that would simply change an “or” to an “and”. The purpose of the amendment is twofold: to make sure the information can be communicated by any means, but to guarantee it is available in at least one place, the Internet site; and to establish a time limit.

● (1615)

[*English*]

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

Does the department have anything additional to add?

(Amendment negated)

**The Chair:** On amendment LIB-1, we have Mr. Fraser.

**Mr. Sean Fraser:** Thank you.

Really, LIB-1 and LIB-2 go together. I hinted that there was going to be language to this effect. The minister did in his testimony, as well.

I had a concern when I saw the Senate amendment prescribing the remedy for dealers who were left with stock on their lot. I understand that the language proposed has been discussed with dealer associations and that they are comfortable. The essence of it is really to clarify what remedies are available to anyone who owns a vehicle that's subject to a recall. Specifically, in proposed section 10.52—recognizing that we're dealing with LIB-1 now, and not LIB-2—it does clarify for greater certainty that dealers have access to those remedies as well. That's the essence of it, and it largely reflects what I understand the dealer associations are comfortable with.

**The Chair:** Would the department like to comment on that before I go to the speakers list?

**Ms. Kim Benjamin:** Just to clarify the conversations we had on this issue, when the original wording was read, our understanding was that the protections did not apply to the dealers but only to the consumers. We felt it was important to clarify the original intent, which was that the dealers had the same types of protections that would be afforded consumers.

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

**Mr. Ben Lobb:** Just for the viewers at home, I have a good feeling that the Liberal amendment will pass when the vote comes. I just wanted to bring that up.

**An hon. member:** Oh, oh!

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

Yes, Mr. Badawey.

**Mr. Vance Badawey:** Thank you.

I would agree with Mr. Lobb, because this amendment does show some common sense.

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

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair.

I just have a technical question.

Mr. Fraser said that Liberal amendments 1 and 2 were closely related. Do his remarks apply to both amendments, or will he be speaking to them separately? Will we be voting on each of them separately?

[English]

**Mr. Sean Fraser:** Technically, there is only a motion on the floor to vote on LIB-1. The explanation sort of applied to both.

**The Chair:** Okay.

All those in favour of LIB-1? Opposed?

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

**The Chair:** Do you have additional comments on LIB-2, Mr. Fraser? No.

Does the department have any comments?

Are there any questions or comments?

All those in favour of LIB-2, please raise your hands—sorry. Go ahead, Mr. Aubin.

[Translation]

**Mr. Robert Aubin:** Thank you, Madam Chair.

[English]

**The Chair:** Did you want to speak to LIB-2, Mr. Aubin?

[Translation]

**Mr. Robert Aubin:** Yes, exactly.

[English]

**The Chair:** Okay, please speak to it.

[Translation]

**Mr. Robert Aubin:** I understand the desire to move closer to what the dealers were asking for, but, in my humble opinion, we are still very far away. Given that the bill seeks to bring our regime in line with the Americans' and that the dealers have specific requests, I wonder why we are hesitating to take the next step.

We don't need a bill to say that automakers can compensate dealers. The manufacturers that act in good faith and have good relationships with their dealers compensate them when the event occurs. When legislation is used to implement a measure, it isn't to regulate something that is working but, rather, to provide for something that could be a problem. What could become a problem in this case is an automaker's refusal to compensate a dealer. The Liberal amendment states that that compensation is now possible, but since it was already possible, it's pointless to make it law.

Instead, the bill should set out a minimum number of criteria requiring automakers to do it. We are a long ways off from that, though.

• (1620)

[English]

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

[Translation]

**Mr. Sean Fraser:** Thank you, Mr. Aubin.

[English]

There were a few substantive reasons I didn't enjoy the version amended by the Senate, which I perhaps didn't give justice to in my explanation.

Very quickly, there are a few reasons I disagreed with the Senate's approach, but their amendment caused me to reflect on it and I do thank them for the steps they took. I had some questions about the wisdom of the federal government trying to legislate the contracting arrangements between commercial parties. I have some questions about our constitutional ability to do it.

I also had a concern in our questioning with the CAA, though they took no position on it. One of the concerns I put on the record at that time was that if we essentially create a 1% monthly interest payment to dealers who are holding stock, manufacturers might be incentivized to repair cars that are not on the road, over cars that are on the road today.

In addition, about the harmonization point you mentioned, the Senate amendment achieves part of the U.S. harmonization, in my understanding, by compensating the dealers but doesn't look at the flip side of that coin, at the obligations those dealers would have to take on before they would be eligible for compensation. We went halfway there. To me, it seems that if we're providing remedies in this bill, we shouldn't put harmonization above what we consider to be the best policy, and if we outline what the right remedies are and say that these apply equally to consumers and to dealers, that is the correct approach.

The amendment I've proposed achieves that end, while at the same time, creating buy-in with industry players. It's not to legislate what one party or another wants, it's to implement what we think is best policy in a way that industry agrees with.

**The Chair:** All right. There are no further comments.

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

**The Chair:** On amendment CPC-2, go ahead, Mrs. Block.

**Mrs. Kelly Block:** Thank you very much, Madam Chair.

I won't say too much about the rationale for this again. This is an amendment that was suggested by the Canadian Vehicle Manufacturers' Association. The rationale, quite simply, is that this amendment provides clarity to the bill as it pertains to the manufacturer's legal responsibility. Ownership and control of the vehicle should determine legal liability. To make the manufacturer legally responsible for an issue outside its control would cross over into the realm of the manufacturer-dealer relationship.

Under this bill, the minister has the power to order a recall, which is the ultimate protection for the consumer.

**The Chair:** Could I ask the department to comment on Mrs. Block's amendment, please?

**Mr. Alain Langlois (General Counsel and Deputy Executive Director, Department of Transport):** I can answer at least the last point from a liability standpoint.

The language of the legislation requires companies to ensure that a defect is corrected before the vehicle is offered for sale, so it's not an obligation that is absolute. The obligation imposed is to take reasonable means to ensure that the goal is achieved. They have to demonstrate that they have done everything within their power to achieve the goal. They obviously cannot be held responsible for something that dealers would not be willing to do of their own volition to respect a contract that might exist between themselves and the dealers. They would not be held liable for something that is completely outside their control.

**The Chair:** Go ahead, Ms. Block.

**Mrs. Kelly Block:** In response to that, if it doesn't change the reality of that, if it provided clarity to the industry, would it be supportable? Does it change anything to clarify that?

• (1625)

**Mr. Alain Langlois:** The only issue with the language—and Kim can probably clarify as well—is that it would force a company to ensure that the defect is corrected before they are offered for sale to the dealers, as opposed to the dealers down to the consumers. The vehicles that are already within the control of dealers would be allowed to go to consumers without the protection of that section. From a safety standpoint, I think it lessens the safety protection of the legislation.

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

**Mr. Ken Hardie:** One other point that was raised in discussions is that the regulation of dealers is more a provincial matter than federal. Maybe staff can clarify that or confirm that.

**Mr. Alain Langlois:** I will only say that the purpose and scope of the legislation is to regulate the vehicles and the equipment and that the legislation does that by regulating companies, not dealers.

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

**Mr. Sean Fraser:** This is one that I was looking for feedback on. From the liability point of view, does the draft right now...?

When I met with manufacturers, one concern they had was that if they did everything required of them and a dealer sold it anyway—let's say they have sent the dealer correspondence, but the dealer ignores it and doesn't get back to the manufacturer, who has told the dealer there's a defect—they had a sincere fear that they were going to be held responsible.

Are you telling me right now that if they're diligent and do everything they're supposed to do, there's no risk of that happening under the legislation as it has been drafted?

**Mr. Alain Langlois:** That's correct. Their obligation is to “ensure”. The obligation is not to achieve the result at all costs; it is to ensure that this result is achieved. If they can demonstrate that they've taken a reasonable step within their own discretion and authorities to achieve the result, then from a regulatory compliance standpoint they're okay.

**Mr. Sean Fraser:** Okay.

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

**Mr. Ben Lobb:** I've noticed that in the last couple of votes there have been some comments made. For this one I would ask that there be a recorded vote, just to satisfy all members so that they know how each member votes. It seems important.

**The Chair:** That's no problem, Mr. Lobb.

If there is no further comment, I shall put the question on amendment CPC-2.

I see that in Mr. Aubin's absence, we have a tie vote of four yeas and four nays. I have to break the tie, and I don't support the amendment.

(Amendment negated: nays 5; yeas 4 [See *Minutes of Proceedings*])

Next is amendment NDP-6.

Go ahead, Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin:** Madam Chair, my apologies for my absence. I hope the reason I'm feeling ill isn't that I continue to move the same amendment, but to no avail.

NDP amendment 6 seeks to add the following language to the bill:

(4) Within two days after a final decision is made, the Minister shall publish it on the Internet site of the Department of Transport and make it available by any other....

I think we've discussed the matter enough for everyone to understand the purpose of the amendment. I will let the common sense of the committee prevail.

[*English*]

**The Chair:** Thank you very much, Mr. Aubin.

(Amendment negated)

Next is amendment NDP-7.

[*Translation*]

**Mr. Robert Aubin:** At the risk of sounding like a broken record, NDP amendment 7 seeks to add the following language to the bill:

(2) Within two days after an order is varied or revoked, the Minister shall publish the varied order or a notice of revocation of the order on the Internet site of the Department of Transport and make the order or notice available by any other means that the Minister considers appropriate.

As I said, the time limit could be three, four, or five days, indeed, a week. I should also point out that, here again, we would like to replace the “or” with an “and”.

To my mind, the amendment is entirely appropriate.

[*English*]

**The Chair:** Is there any comment?

(Amendment negated)

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

**The Chair:** Shall clause 11 carry?

I haven't seen anybody do anything. If you want to raise your hands, it would be helpful. I'm trying to keep Mr. Chong's comments in mind about moving things along.

(Clauses 11 to 13 inclusive agreed to sequentially)

(On clause 14)

**The Chair:** On clause 14, we have amendment NDP-8.

Go ahead, Mr. Aubin.

• (1630)

[Translation]

**Mr. Robert Aubin:** I'm not sure whether I already mentioned this, but it seems to me that this simple amendment would make things even clearer for everyone, not to mention more understandable and specific. It would amend the clause in question by replacing the "or" with an "and" and prescribing a time limit. That's the gist of NDP amendment 8.

I'll stop there.

[English]

**The Chair:** Mr. Fraser, go ahead.

**Mr. Sean Fraser:** Not to repeat ourselves, but I think we've established what my thoughts are on the "two days" aspect.

On the question of "and" or "or", I am happy with the current draft. If this is something that you think adds value and you would like to adopt the language that was there previously but shift "and" and "or", I would support that. I'll leave it to you to decide if that is something you want. I could go one way or the other.

I'll leave it at that.

[Translation]

**Mr. Robert Aubin:** I think I've made my preference abundantly clear, and the committee has rejected all the other amendments. For the sake of consistency, we would have to start all over to insert "and" throughout. That would take too long, and we'd run out of time. Regardless, what I really want is a prescribed time limit.

[English]

**The Chair:** Thank you.

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** We now move to NDP-9.

Mr. Aubin, go ahead.

[Translation]

**Mr. Robert Aubin:** Thank you.

I am going to change tacks. This will probably lead to the same results, but I'll do it anyway.

We are talking here about consent agreements the minister may sign. The bill contains a provision that allows consents to be amended along the way for all sorts of reasons. However, there is no mechanism mentioned anywhere as to how the consent agreement can be rescinded or nullified. That is the gist of amendment NDP-9, which reads as follows:

(7) The Federal Court may rescind a consent agreement that it has registered, on application by the minister or by any party to the consent agreement, if it finds that the circumstances that led to the making of the agreement have changed and, in the circumstances that exist at the time the application is made, the agreement would not have been made or would have been ineffective in achieving its intended purpose.

This introduces consistency. For comparison purposes, I humbly submit that the competition commissioner has this right to rescind, among other things. Our amendment is strongly inspired by a similar mechanism in the Competition Act, which would make sense in the bill we are studying.

[English]

**The Chair:** Mr. Hardie, go ahead.

**Mr. Ken Hardie:** I will probably mostly defer to my friend Mr. Fraser on this one.

I thought the essence of a consent agreement was that both sides agree to accept it, and then it would be required that both sides had to agree to rescind it. You are looking at perhaps giving a third party—i.e., the minister—or one of the two parties involved in the consent agreement the option to rescind it. Again, I'm not sure that this actually works.

• (1635)

**The Chair:** Mr. Fraser, go ahead.

**Mr. Sean Fraser:** My concern with this one is one of practical consequences. Perhaps I'm a bit jaded from having been a litigator before. Consent agreements were great to give certainty. If there was an opportunity for someone to challenge one when it became in their economic interest to do so based on shifting facts, my experience would suggest that they would take that opportunity. I see this opening up of consent orders potentially causing a flood of litigation over whether circumstances have changed. I don't think that would be productive.

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

[Translation]

**Mr. Robert Aubin:** Yes.

In the best possible world, when everything is going well, there is no need to rescind a consent and the minister is not the one who would do so. He or she would submit a request to the Federal Court and it would rescind the consent.

The question is very simple. A consent agreement is given. What do we do if either of the parties—not the minister, hopefully—does not comply with the consent requirements? If there is no way of rescinding the consent, and moving to another step which existed previously i.e., a trial, there would be no other avenues.

[English]

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

[Translation]

**Mr. Angelo Iacono (Alfred-Pellan, Lib.):** Like my two colleagues, I don't think the Federal Court would accept the request. It would probably sent it back to the two parties for them to deal with it properly.

[English]

**The Chair:** All right.

[Translation]

**Mr. Robert Aubin:** Then why would the Federal Court consent to examine the same right for the competition commissioner?

**Mr. Angelo Iacono:** You referred to Federal Court in your comment. Why would the consent be brought before that court when this occurs between the two parties?

[English]

**The Chair:** Do we want any further comments from the department on this to make sure that everyone understands?

[Translation]

**Mr. Alain Langlois:** I would like to add something.

Once an agreement has been registered with the court, it is binding and becomes a court order. If a party to the agreement—it is never the minister—does not respect their obligations, there are contempt of court measures that may be taken under Federal Court rules. In cases of non-compliance, there are ways to apply or implement an order.

[English]

**The Chair:** Thank you.

[Translation]

**Mr. Robert Aubin:** That is in keeping with what I just said. The consent agreement is already registered with the Federal Court. Clearly, if the minister or one of the two parties is given the right to rescind a consent agreement, the Federal Court will be informed and it will be up to the court to act. Rather than sending this back to the parties, it could very well order that the consent be rescinded and give the minister a choice of other measures.

[English]

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

Did you have something to add?

[Translation]

**Ms. Marie-France Taschereau (Legal Counsel, Department of Transport):** I don't want to speak to all of the provisions in competition law, but if you are referring to the consent that is used in merger cases, remember that the competition commissioner does not have all of the relevant information when he or she decides to sign a consent agreement with the parties. The purpose of the Competition Act is to determine whether the merger would lead in the future to a significant decrease in competition.

In the context of the Competition Act, it seems important to allow the commissioner or another party to ask for an amendment if the circumstances change in a way that was unpredictable when the agreement was signed. Here, when Transport Canada signs a consent agreement, the facts are established, and this allows each party to make the best decisions and to see what they will give up during negotiations that are appropriate, in the context of safety.

[English]

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

I will call the vote on amendment NDP-9.

(Amendment negated)

(Clause 14 agreed to)

(On clause 15)

**The Chair:** On amendment NDP-10, go ahead, Monsieur Aubin.

[Translation]

**Mr. Robert Aubin:** The spirit of this amendment is very simple. It allows the governor in council, through regulation, to establish the form and substance of the automobile safety notices of violation. It is important that there be limits on the power of the minister, so as to try to eliminate potential political interference.

That is the essence of paragraph 16.1(e), which we add to the series of conditions. Its purpose is to:

(e) establish the form and content of notices of violation.

The governor in council already has a host of responsibilities, and we would like to add one that appears consistent in this context.

• (1640)

[English]

**The Chair:** Is there any departmental comment?

**Ms. Kim Benjamin:** This is meant to show what types of headings, boxes, and types of information would be on the form, and that may change over time.

**The Chair:** Thank you.

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** On amendment NDP-11, go ahead, Mr. Aubin.

[Translation]

**Mr. Robert Aubin:** Thank you, Madam Chair.

I am going to say a few words about this amendment, the essence of which is similar to the spirit of another amendment which comes up later and concerns changes to the penalties.

According to the official wording on page 13 of the bill, the imposition of penalties is not punitive. That may be so, but a penalty remains the penalty. If the purpose of the penalty is not normally punitive, at the very least, it aims to deter. Consequently, the provision in question should deter companies from doing something that is not desirable. That would be the objective of the penalties we propose in amendment NDP-15, which we will submit later.

The purpose of this amendment is to change this somewhat easygoing approach. I understand the purpose of stating that the proposed provision is not intended to be a punishment, but it should nevertheless have some teeth, and its clauses should be a disincentive. That is why we are proposing this new wording.

[English]

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

**Mr. Ken Hardie:** I'll demonstrate again that I am not a lawyer. The word "deterrence" signals—to me, anyway—that perhaps there's some criminality involved for which a penalty of some sort should apply, as opposed to somebody just doing the wrong thing. For instance, an administrative monetary penalty, if it was stiff enough, could do the job of deterrence, so that if you get nailed once, you get nailed again.

The idea is to make sure that the right thing is done. I think that in fact there's an inference that deterrence might have to involve some test of criminality, that could complicate the matter.

**Mr. Alain Langlois:** The only comment I would offer is that administrative monetary penalties are well established. Now at least there's case law that recognizes and confirms that they're administrative in nature and not criminal in nature. If they were to be criminal in nature, charter protection would be attached to the process of issuing an AMP.

The notion of deterrence, or *dissuasion* in French, raises the question—and I'm not sure I have an answer to give—as to whether we're moving from an administrative to a criminal situation, which is something we should not be doing. I don't have a firm answer. I'm not sure I'm there yet.

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

[Translation]

**Mr. Robert Aubin:** I found Mr. Hardie's question entirely relevant.

I am not a lawyer either, but it seems to me that when we are talking about dissuasion, this does not automatically fall under the Criminal Code, for instance in cases where fines are very negligible. One witness, whose name I unfortunately don't recall, told us that if the fine imposed on a large manufacturer is not in the seven-figure range, it does not even impact their day.

This is something that is a disincentive and it is not a criminal matter. If a manufacturer does the math and sees that it costs less to break the law than to respect it, this means that the law does not have a deterrent effect, even if what he is doing is not necessarily criminal. I think that the deterrence refers to a criminal act.

Whatever the case may be, I would have liked a precise answer.

• (1645)

[English]

**The Chair:** Go ahead, Ms. Block.

**Mrs. Kelly Block:** When I look at how it is framed in the act, I guess the purpose of the penalty is to promote compliance. I find it interesting that we think we're promoting compliance by putting a penalty in place. The definition of deterrence is “the action of discouraging an action or event through instilling doubt or fear of the consequences”. That sounds to me like what a penalty is intended to do.

Here it says that the penalty is to promote compliance. To me, it's an interesting spin on the issue, and I'm not sure if even changing the word would make a difference, but I recognize what Mr. Aubin is trying to get at.

**The Chair:** Next is Mr. Hardie, and then Mr. Fraser.

We have to keep our eyes on the clock, ladies and gentlemen.

**Mr. Ken Hardie:** Just a—

**The Chair:** I'm sorry. Hold on. Mr. Lobb was first.

**Mr. Ben Lobb:** Mr. Hardie can go ahead.

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

**Mr. Ken Hardie:** Is there something that is in the act or perhaps elsewhere to the effect that if you get a bad act or somebody who is prepared to take an administrative penalty as the cost of doing business, then the heavier hand could indeed come down?

**Mr. Alain Langlois:** It would be criminal prosecution. Criminal prosecution is another enforcement tool, but that's criminal.

**Mr. Ken Hardie:** Is it in here somewhere?

**Mr. Alain Langlois:** It's in the act already.

**The Chair:** Mr. Fraser is next. Then we have Mr. Lobb.

**Mr. Sean Fraser:** There are different administrative monetary penalties in different pieces of federal legislation. I think there are some in the Aeronautics Act and in the Canada Marine Act. There are a few out there.

**Mr. Alain Langlois:** Yes.

**Mr. Sean Fraser:** How are they structured? Are they exactly the same as the legislation that's being proposed here, and has it been an effective way to promote compliance with the act?

**Mr. Alain Langlois:** They are all a bit different, but this one has been tailored to the most modern one that we've done lately. They're in line with case law. To go back to Ms. Block's comments, the case law, word for word, is that the purpose of an administrative regime is to ensure compliance with the regulatory framework.

**Mr. Sean Fraser:** You're saying it's one of the reasons we use that language specifically. It's so that we don't attract the charter protections that might—

**Mr. Alain Langlois:** Yes.

**Mr. Sean Fraser:** Okay.

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

**Mr. Ben Lobb:** What is the maximum penalty that has been enforced to date? I'll start with that question.

**Mr. Alain Langlois:** Under an administrative monetary penalty, obviously none, because they don't exist. The introduction of the tool is in this legislation.

**Mr. Ben Lobb:** Sorry; what projections could you see, then, based on historical cases? What would we be talking about? You see where I'm coming from, right?

**Ms. Kim Benjamin:** The intent is that we would be developing the maximum levels of the penalties within regulation and that what we would do through the regulatory process is determine, depending on the egregiousness of the violation, what level of penalty there would be. What it would include is the ability to say that it could be on a per vehicle basis or on a per day basis.

Even though we may set a fairly low level, it could increase quite significantly, depending on the scope of the issue. However, the intent would be to go through the regulatory process to develop those levels, the maximum levels, and to say that for a series of violations, this would be the cap we'd put on it.

**Mr. Ben Lobb:** Administrative monetary penalties in the case of a corporation, which I'm assuming could be an airbag manufacturer or the assembler itself—

**Ms. Kim Benjamin:** For us, it would be the manufacturer.

**Mr. Ben Lobb:** Okay, yes.

Then it could be \$200,000, the way it says it here, “payable for each violation”. Is the manufacturer of, let's say hypothetically, a defective airbag—

**Ms. Kim Benjamin:** For us, just to confirm, companies are manufacturers and importers. They're not component developers.

• (1650)

**Mr. Ben Lobb:** However you want to say it, it would be \$200,000 per vehicle. Is that the way, or are you saying—

**Ms. Kim Benjamin:** It could be up to a maximum. When we develop the regulations, we have a maximum in terms of what we would use in the regulation. However, in the regulation we may decide that for a violation it might be \$10,000 or \$200,000. Then we could say “per violation”, which means it could be multiplied by the number of vehicles or the number of days involved.

**Mr. Ben Lobb:** So you, through regulation, will implement this.

**Ms. Kim Benjamin:** That's correct.

**Mr. Ben Lobb:** When we're talking about “to promote compliance”, I know that if you're a multinational vehicle assembler, Canada is not the biggest market around, but it is a fair size. It could be a very significant penalty they'd potentially be facing if the violation were egregious enough.

**Ms. Kim Benjamin:** It could be quite significant, which is why we need to go through the regulatory process to develop what those maximums would be, through full consultation with stakeholders and the public.

**Mr. Ben Lobb:** Just out of curiosity, what does the U.S. have?

**Ms. Kim Benjamin:** The U.S. has an overall cap rather than the per regulation cap. I'd have to confirm that, but I believe their cap is \$105 million at this point in time.

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

Are there any further comments?

(Amendment negated [See *Minutes of Proceedings*])

**The Chair:** As I mentioned earlier, amendment NDP-12 is out of order, according to our clerk.

On amendment NDP-13, go ahead, Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair.

This is again a question of time limits. This time, we don't hesitate to include a limit in the act. We are talking about a two-year limit, although the amendment proposes a five-year limit. The amendment is based on examples where things extended over time.

Let's take the example of General Motors, which had to deal with a lot of problems. Ten years went by between the discovery of a potential problem and its final resolution.

If there is a statute of limitations that expires after two years, after which nothing more can be done, it seems that that time limit is somewhat short. And so we are proposing a five-year limit. If an amendment were to propose a seven-year limit, I would support that as well. However, we feel that a two-year limit is clearly too short.

[*English*]

**The Chair:** Could we ask the staff to comment, please?

**Ms. Kim Benjamin:** We chose the two-year period because it was in alignment with the period we have for the criminal aspect of this

issue as well. The intent is that it's two years after we discover the issue, not two years after an infraction takes place, so that we would be able to do it within that time period and it would not be dependent on when the infraction occurred.

**The Chair:** Thank you.

Go ahead, Mr. Fraser.

**Mr. Sean Fraser:** You just raised a point that I had some interest in. Two years is the typical limitation period for different causes of action, criminal or otherwise, in different provinces.

I've seen limitation legislation before that specifically said something to the effect of “at the time the claimant knew or ought to have known” rather than “after the time when the subject matter of the proceedings arose”.

I think that if you don't know until four years afterwards, I would hate to see the language we use prevent a claim from going forward. I think that's part of the harm Mr. Aubin was targeting.

This is probably for Mr. Langlois. Are we comfortable that the language will capture the discoverability principle?

**Mr. Alain Langlois:** This is consistent with the language we have in every AMP regime we have. Two years is the longest prescription period for AMPs that we have. Most of them are one and a half years, one year, or two years. Yes, that is how it has been interpreted.

**Mr. Sean Fraser:** There's a case law to that effect saying—

**Mr. Alain Langlois:** I don't know for sure that we've been challenged on it, but this is how it has been interpreted.

**Mr. Sean Fraser:** Interpreted by whom?

**Mr. Alain Langlois:** By the department when it issues an AMP.

**Mr. Sean Fraser:** Okay.

**Mr. Alain Langlois:** In a normal circumstance, the department will readily become aware of an issue, but if the circumstances were such that the department discovered it—

• (1655)

**Mr. Sean Fraser:** That's the time the proceedings arise, in the opinion of the department.

**Mr. Alain Langlois:** Yes.

**Mr. Sean Fraser:** Okay.

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

(Amendment negated [See *Minutes of Proceedings*])

(Clause 15 agreed to)

(On clause 16)

**The Chair:** On clause 16, we have NDP-14.

Go ahead, Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair.



As my colleagues will have seen, the changes are clear, net and precise. These are considerable amounts. This corresponds exactly to the spirit of amendment NDP-11, the purpose of which is to deter the business from getting around the law. One witness told us that in order to be understood well, the law should include seven-figure amounts, and that is what it does.

As long as Transport Canada and the manufacturers get along well, this will not be invoked. However, should it become necessary, we will have a law with teeth and a deterrent measure. That was the objective of this amendment, and it continues to be, since it has not yet been rejected.

[*English*]

**The Chair:** Thank you.

Go ahead, Mr. Fraser.

**Mr. Sean Fraser:** On this issue, there might be a difference in our interpretation of facts, given what Ms. Benjamin laid out just a moment ago.

I think we could get to these figures you have just raised, but the violations are on a per vehicle, per day basis, so currently it's entirely possible for a maximum sentence to far exceed \$2 million or even \$100 million. Is that accurate?

**Ms. Kim Benjamin:** The intent, as we noted, is that it's per vehicle per day. Depending on the type of infraction, it would be one or the other. If they failed to issue a notice, it would be on a per vehicle, per day basis, so yes, it could get quite high, depending on what we put in the regulation.

**Mr. Sean Fraser:** But right now there is no global maximum?

**Ms. Kim Benjamin:** No.

**Mr. Sean Fraser:** Is it not mutually exclusive to the possibility of other prosecution, such as criminal prosecution, for example, in a truly egregious case?

**Ms. Kim Benjamin:** I will turn to Alain.

**Mr. Alain Langlois:** My understanding of the amendments proposed is that this is to increase the criminal prosecution fines, not the administrative monetary fines. This would be the prosecution amount.

**Mr. Sean Fraser:** Okay. Thank you.

**The Chair:** I will call the vote.

(Amendment negatived [See *Minutes of Proceedings*])

(Clauses 16 and 17 agreed to)

**The Chair:** Next is proposed new clause 17.1, amendment NDP-15.

Go ahead, Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair.

When we drafted this amendment, it seemed reasonable to us. I would add that today, given the number of amendments that have been rejected, it seems even more important to me, since the obligation to publish within a prescribed period of time has been systematically refused. We now know now that "as soon as

possible", or any other vague wording, can mean the next morning, or two years later. It would seem important to us that the minister at least report to Parliament as to the use of the new powers given to him by Bill S-2. That is why we propose that:

21 (1) No later than December 31 next following the end of each fiscal year, the minister shall prepare a report on the administration and enforcement of the provisions of this act during the previous fiscal year and cause it to be tabled before each House of Parliament.

In this way there would at least be a secure record where on a yearly basis all of the decisions would be made public and each member could apprise himself of them and decide to convey the information to his riding in anyway he or she deemed appropriate.

Subclause 21(2) describes what this annual report should contain. I don't want to read each amendment again. You have had time to read them. It seems to me, now that the obligatory publication of a report at a set time has been rejected, that the annual report should be the minimum we could expect.

• (1700)

[*English*]

**The Chair:** I ask the department to comment, please.

**Ms. Kim Benjamin:** With respect to the defect and recall program that this measure is addressing, we already post a fair amount of information and we do try to keep everything public right now.

**The Chair:** Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

(Clauses 18 and 19 agreed to)

**The Chair:** Shall the short title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill, as amended, carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the chair report the bill, as amended, to the House?

**Some hon. members:** Agreed.

**The Chair:** I refer everybody back to the committee business section. We have a report on a committee business proposal that the subcommittee is recommending.

I had the clerk send the committee agenda of the subcommittee to everyone electronically, which is not normally the process, just so that you would have a chance to review it prior to its being adopted here at committee.

To our witnesses, thank you very much for your help, and of course thank you to our great clerical help here. We have to do a bit of committee business, but you are free to exit quietly if you like.

You have Report No. 2, which was sent to you electronically. It is from the Subcommittee on Agenda and Procedure.

Has everyone looked at it? Are there any comments? If not, can someone move adoption of the subcommittee report?

**An hon. member:** So moved.

(Motion agreed to)

**The Chair:** Mr. Aubin, you wish to present something.

[*Translation*]

**Mr. Robert Aubin:** Yes.

I certainly don't want to rush you, if you have other points to discuss or present, but I would like you to keep one or two minutes for me before you adjourn the meeting so that I can submit a motion I would like us to vote on.

[*English*]

**The Chair:** Yes, Mr. Aubin.

We have adopted our subcommittee report. We've completed Bill S-2, and we can now look at your motion, Mr. Aubin.

Are you moving it now and introducing it officially?

[*Translation*]

**Mr. Robert Aubin:** Yes.

[*English*]

**The Chair:** Thank you.

You have already tabled this motion some time ago, so you are free to go ahead and speak to it.

[*Translation*]

**Mr. Robert Aubin:** Thank you.

I will be very brief because we already talked about this.

Again this morning, I had the pleasure of being invited to the consultations conducted by the Department of Transport. One of the important questions we discussed concerned the means to take to reduce greenhouse gases and improve our transportation strategies.

In addition, yesterday, my colleague tabled a private member's bill concerning VIA Rail.

It seems really essential that in 2017—it could be 2018, we are easy to get along with—we take the time to do a study on Canada's passenger rail needs. In my opinion, not only is the train the best way of allowing the population to travel in as important a corridor as Quebec-Windsor—and that is not the only one we would discuss—but it is also the best way we have of removing cars from circulation.

These days we talk about electric and hybrid cars, and all sorts of other attempts to reduce greenhouse gases—I am not against any of these measures—and it seems to me that train travel is something we should examine as quickly as possible.

This is all more necessary since VIA Rail has submitted a certain number of projects that just seem to have been on the back burner for several months; we could perhaps agree to hear the various parties and send recommendations to the Minister of Transport that will allow him to accelerate putting in place this 21st century means of locomotion.

• (1705)

[*English*]

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

Go ahead, Mr. Fraser.

**Mr. Sean Fraser:** I have a suggestion, and depending on Mr. Aubin's response, potentially a subamendment as well.

I actually like the idea. I think it's an important one for moving people across Canada.

We're about to eventually get to a study on transportation corridors. It strikes me that building passenger rail into our study on transportation corridors might be an effective way to build it into a big study we've already taken on. If you're happy with that idea, I propose a subamendment that we add the language "as part of its study on transportation corridors".

If you would rather do it separately, I'll go with your wish.

**The Chair:** Let me complete our speakers list.

Mrs. Block is next.

**Mrs. Kelly Block:** Thank you very much, Madam Chair.

On what Mr. Fraser is suggesting, point number 8 of the report, where we talk about the meetings devoted to the study of the Canadian transportation and logistics strategy, it also suggests that this study should address the transportation both of passengers and of goods.

I see that this study is already contemplating something that's being moved, so whether we support the motion because we're already thinking of doing that or whether we need the motion because we're already thinking of doing that, the committee needs to decide.

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

**Mr. Vance Badawey:** I would agree with both the former speakers. When I put forward the motion to study transportation logistics distribution corridors, the intent was to look not only at trade corridors but also passenger corridors.

That said, I would also add that yes, Ms. Block, we can pass this now and make it part of that, or we can just leave it alone. I'll leave that up to Mr. Aubin.

If you're not satisfied that the former motion would cover it, I have no problem supporting this motion. It would just work in alignment with the former motion.

One thing I do want to mention, though, is that there is going to be a need within that process to include our provincial counterparts, simply because they have jurisdiction over a lot of the passenger services. More importantly, we need to align the passenger services with other passenger services, including rail, of course, whether it's the GO train in Ontario or high-speed rail and the possibility of high speed. I think it's about time we had that dialogue. Add to that road and buses and other methods of transportation that carry passengers as well. It does evolve into a bigger dialogue with other partners, such as those from the provincial and the municipal levels.

Thank you.

**The Chair:** Mr. Aubin, could we have your comments, please?

[*Translation*]

**Mr. Robert Aubin:** I agree totally with including the other partners in the discussion, since that is inevitable if we want an efficient network. However, I think we need to define the topic, that is to say that we should not group the various modes of transportation; we need to devote a study to passenger transport with the various partners concerned. If that is the plan, I am in.

[*English*]

**The Chair:** Mr. Aubin, right now the report adopted by the subcommittee says that the study should address the transportation of both passengers and goods as part of the transportation and logistics strategy. We have adopted that. Do you want to incorporate your motion, or would you like us to vote on your motion separately? Your motion is already incorporated in the work plan.

[*Translation*]

**Mr. Robert Aubin:** If I understood correctly, we could discuss the two topics separately within this work plan; we would have a certain number of meetings specifically allocated to passenger transportation. That suits me.

• (1710)

[*English*]

**The Chair:** Yes.

Go ahead, Mr. Badawey.

**Mr. Vance Badawey:** That raises a good point, Mr. Aubin. We have dedicated four meetings to this, but quite frankly, it might take more, because it might branch out into those other methods of transportation with respect to trade and passengers. We have to be cognizant of the distribution and logistics part of it as well, with

trade but also with passenger travel. We've dedicated four meetings, but to your point, it may in fact take more.

**The Chair:** Mr. Aubin, do you want to have a vote on your motion? Are you satisfied that what we've already adopted through our subcommittee is sufficient to cover off the passenger rail that you're talking about?

I think we're all saying the same thing. We want this to happen.

[*Translation*]

**Mr. Robert Aubin:** Yes.

[*English*]

**The Chair:** I know you haven't had a good day—

**Voices:** Oh, oh!

**An hon. member:** We're going to give you this one.

**The Chair:** —but if you would like we can....

**An hon. member:** Let's vote.

**The Chair:** Yes.

We have Mr. Aubin's motion before us:

That the Standing Committee on Transport, Infrastructure and Communities conduct a study on Canada's requirements for passenger rail service.

(Motion agreed to)

**The Chair:** Thank you all very much for your co-operation today, including Mr. Lobb, Mr. Chong, Ms. Block, and the rest of the group over here. Thank you also to our staff.

The meeting is adjourned.





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