



House of Commons
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 023 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, November 2, 2006

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Chair

Mr. Merv Tweed

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• (1535)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Good afternoon, everyone.

I call to order meeting 23 of the Standing Committee on Transport, Infrastructure and Communities, pursuant to the order of reference of Thursday, September 21, 2006, Bill C-11, an act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other acts.

Mr. Julian.

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

Before we start the order of the day with the witnesses who have come, I would like to move the notice of motion I supplied for discussion on Tuesday to the end of the meeting. I'm moving it now because Ms. Chow will be debating this motion and I will not be here at the end of the meeting.

So if I have the consent of the committee I'll move it. Then it can be put on the order paper so you can bring it back after the order and the witnesses.

The notice of motion is simply that the Standing Committee on Transport, Infrastructure and Communities study the Roger Tassé review of the Toronto Port Authority following its release at an upcoming meeting of the committee. I so move.

The Chair: The motion has been tabled, and we will debate it at the end of the meeting, after the presentations.

Thank you, Mr. Julian.

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

The Chair: Joining us today are our witnesses. Mr. Jean Gauthier and Ghyslain Chouinard are representing Regroupement des citoyens contre la Pollution. Bernie Churko is representing the Farmer Rail Car Coalition.

We have seven minutes for each presentation. Then we'll have some questions from the committee.

Please begin.

[Translation]

Mr. Jean R. Gauthier (President, Regroupement des citoyens contre la Pollution): Thank you, Mr. Chairman.

I would first like to thank the members of the Standing Committee on Transport, Infrastructure and Communities for giving us the

opportunity to make observations and recommendations. We hope that we can be of use to you and inspire the committee in its work.

The Regroupement des citoyens contre la pollution was founded a few years back. Its mission is to pursue humanitarian objectives, such as defending quality of life and environmental integrity, providing its members and the general public with the information needed to properly understand issues of industrial and agricultural pollution, and taking all the means available to identify, denounce and, if necessary, prosecute individuals or corporations responsible for commercial and industrial activities deemed to contaminate or harm the environment. That is our purpose.

In our introduction, we would like to stress that we fully endorse the brief submitted by the Coalition québécoise contre les bruits ferroviaires (Quebec Coalition Against Railway Noise) and that of the City of Lévis, which were submitted to you and tabled a few days ago in the context of the review of Bill C-11.

The railway industry has flourished in recent years, and we are delighted that it has. However, this has given rise to a number of problems for people living close to railway tracks.

The two major problems linked to this growth are a significant decline in the quality of life caused by noise (whistles, engines running at full power, screeching wheels, cars being coupled in switching yards and inconvenience to road users) and the imminent dangers related to the transportation of dangerous goods (derailments, spills, collisions, explosions, etc.).

This situation has a deplorable impact on the quality of life and on the health of residents along with negative economic impacts. The activities of the major rail carriers, i.e, CN and CP, have a direct impact on the real estate value of adjacent properties.

I will now ask Ghislain to talk to you about noise pollution.

• (1540)

Mr. Ghyslain Chouinard (Vice-President, Regroupement des citoyens contre la Pollution): First off, we believe that the issue has already been raised in previous briefs.

We are convinced that noise has adverse effects and consequences on health. This has been proven by the World Health Organization. Our brief contains hyperlinks to the WHO website, which includes the recommendation that noise should not exceed 45 decibels at night and 55 decibels in daytime. These statistics have been scientifically proven.

As Mr. Gauthier indicated, there are two problems related to the railway industry. First, there is noise caused by motor cars and cars being coupled in switching yards. Second, we dealt more specifically with train whistle.

The noise generated by train whistles at grade crossings exceeds in intensity and sound pressure all other noise generated in urban areas. For example, in the Charny rail yard alone, where there is a major switching yard, trains whistle more than 20 times between 10 p.m. and 6 a.m. the next morning. A train that whistles at 4:48 a.m. can awaken all the residents of a given town. We are convinced that such micro-awakenings have a detrimental effect not only on the quality of life, but also on the general productivity of all residents who have to put up with such inconvenience.

There are costs to these measures, but we cannot determine the amount.

In the case of train whistles, we are not acoustic, engineering or transport experts. However, we do know that we are no longer living in the 19th century, when trains had to whistle at every grade crossing because communications means at the time were not as developed. The untimely use of train whistles in the 21st century, as we experience it today, harks back to another area. This bygone practice is totally unacceptable.

We are not currently subject to the War Measures Act; as far as I know, we are not at war. So I do not think that a company, a corporate citizen, needs to signal its presence in such an egregious fashion, without any reason. We believe that if there is nothing on the rail track, there is no need to use train whistles. If all car drivers honk their horns each time they cross an intersection, that would cause an appalling din. And yet, that is what trains are currently doing.

In addition to the problem of noise generated by whistles, there is also noise generated by screeching wheels. The general state of disrepair of the rolling fleet, whether it be railway tracks or cars, generates noise that is audible at all hours of the day. You are aware of the problem of CN, for example, which has increased rail traffic exponentially over the past few years, leading to a similar rise in inconvenience and a drop in real estate wealth.

Recently, I had to sell a house that was adjacent to a switching yard. The house has lost almost all of its value. When I bought it in 1993, there were some 10 trains a day. In 2006, a train passes every 15 minutes. It is hard to sell a house when a train passes next to it every 15 minutes and generates noise reaching 90 decibels. That amounts to a loss of real estate wealth.

In addition to noise generated by trains, there are also all kinds of environmental dangers associated with the transportation of hazardous materials.

I would like Mr. Gauthier to speak to the issue.

• (1545)

Mr. Jean R. Gauthier: In fact, the statistics on derailments, which can be found on the Transport Canada website, are not very informative and cause many people to shudder.

First of all, there are the extreme convoys, that is to say trains with four or five locomotives pulling 200 cars. These convoys often

stretch for two or three kilometres. This practice is no doubt profitable to the company, but it poses problems, which I will speak about shortly.

There is the poor rolling stock maintenance, as Ghislain mentioned, as well as poor track maintenance. For example, there can be trains of 200 cars that stretch for more than three kilometres and block traffic on main roads, as is the case in Charny, but I am sure that this occurs in other municipalities as well. Some 75 or 100 years ago, when trains with 10, 15 or 20 cars began to appear, that did not pose a problem, but when there are 200 cars, that becomes a serious issue.

Take the town of Charny, for instance, where the railway runs through the town centre. With 200 cars passing through, Charny is split in two. The Chaudière river is located on one side of the municipality. In the event of an accident, an emergency or whatever, 10,000 to 15,000 people would be surrounded, without any way of leaving the area, because the three grade crossings in the space of one kilometre are closed to let the 200 cars pass through the town. If the train were to derail or stop, people in the southern part of the town would have no way to leave the area, which is surrounded by the Chaudière river. Obviously, it was impossible to foresee such danger when the railway was built.

There are consequences when a company increases its number of cars ten-fold or twenty-fold. We should not wait for a disaster to occur before acting. We want to make it known that at the rate things are going, it is not a matter of whether a disaster will occur, but where and when it will happen.

There is another reason why whistles are not useful. According to Transport Canada Statistics, there are more and more accidents, derailments and deaths at grade crossings. So whistles will not make a difference. Furthermore, trains of 200 cars erode the railway infrastructure, making it less stable. The less stable the infrastructure, the greater the risk of accidents.

In conclusion, I would like to give you a little information on potential solutions to replace whistles. We have thought that instead of whistles, sensors could be installed at grade crossings. Sensors are not very expensive and could easily notify the train conductor that there are no obstacles on the track or at the grade crossing, and that the gates are lowered. That would be achievable. Besides, sensors are already used for cabooses. In fact, an electronic confirmation indicates how they have to be operated.

Therefore, sensors allow you to see what is happening one or two kilometres down the track, without needing to blow a whistle. Whistles might also attract people who are looking to commit suicide. That is one of the reasons why we recommend eliminating the use of whistles.

We recommend that there be sound barriers set up around marshalling yards. This is nothing new, because Europeans have been using sound barriers for at least 20 years. In fact, railways pose a real problem over there, maybe even more so than here. People have dealt with the problem, especially in Switzerland, where authorities installed sound barriers in marshalling yards. In our opinion, that would make things a lot easier.

Solutions exist, and we have indicated some in our brief, which you have no doubt read.

If you have any questions, we would be pleased to provide you with additional information on this issue.

[English]

The Chair: Thank you, Mr. Gauthier.

Mr. Churko, please.

Mr. Bernie Churko (Chief Executive Officer, Farmer Rail Car Coalition): Mr. Chairman, members of the Standing Committee on Transport, good afternoon. On behalf of the Farmer Rail Car Coalition, I want to thank you for this opportunity to comment on Bill C-11.

The Farmer Rail Car Coalition, an organization comprising 17 farm organizations from the three prairie provinces, was established to realize a fairly simple goal: to provide an adequate supply of reliable, well-maintained, modern cars for the movement of western Canadian grain at the lowest possible cost to farmers.

Considering that the previous government had committed to selling its hopper car fleet, the FRCC is convinced that it had developed a business plan that would have delivered on that goal. It is that plan that formed the basis of the agreement reached by the FRCC and the Government of Canada in November of 2005.

During the development of its business plan, the FRCC examined the costs associated with the maintenance of hopper cars in North America. After extensive study, it determined that the North American industry average cost related to the maintenance of a grain service hopper car of similar vintage to those of the government fleet is approximately \$1,500 per car, per year. The Canadian Transportation Agency had estimated that for the 2002-2003 crop year, \$4,329 per car, per year is embedded in the revenue cap. Not only were the costs excessive, the cars were not being maintained to acceptable standards. For the federal government fleet, this difference in cost approaches \$40 million annually.

On May 4, 2006, the new federal government announced its decision to retain ownership of the federal hopper car fleet, thus ending the proposed purchase of the fleet by the FRCC. To address the excess hopper car maintenance costs being paid by producers, as identified by the FRCC, the federal government announced that legislation would be introduced that would result in a net reduction of freight rates by an estimated \$2.00 to \$2.50 per tonne.

Considering that approximately 25,000 cars are used in grain service in an average year, the difference between FRCC's maintenance plan and the costs embedded in the revenue cap could amount to over \$70 million per year when all cars—other government cars, the Canadian Wheat Board cars, and the railway cars—are included.

The FRCC advised the government that it was prepared to support the government's decision to retain ownership providing six recommendations were adopted. Two of these require legislative amendments. These recommendations were forwarded to the members of the Standing Committee on Agriculture and Agri-Food and, I understand, to this committee. The Standing Committee on

Agriculture and Agri-Food adopted a variation of the FRCC's recommendations on May 30, 2006.

The first of these six recommendations was to introduce legislation to remove from the revenue cap the excess maintenance costs for all cars moving statutory grain. Mr. Chairman, we are very pleased to see that the government has taken action on this recommendation.

After examining the amendments to the Canada Transportation Act proposed in Bill C-11, the FRCC has concluded that the addition of clause 57 of the transitional provisions does provide the agency with the legislative authority needed to undertake the recosting of hopper car maintenance for all hopper cars.

The FRCC and all its member organizations wish to thank the government for recognizing and expeditiously addressing this problem. We do have two concerns, however. In many cases, when the agency undertakes a railway costing exercise, the primary source of their information is the railways themselves. This happens because in most instances no other source of data exists. In the area of hopper car maintenance, however, there are numerous sources of information that can be drawn on by the agency. In fact, parties other than the class 1 railways own nearly 65% of hopper cars in service in North America. It is our view that this information provides an invaluable benchmark against which the railway maintenance costs should be compared.

Our second concern is that in some cases the agency conducts its work in railway costing without the benefit of input from affected stakeholders. We believe it is imperative that in this case stakeholders be invited to participate in the process. This has proven to be a very successful process when the agency indexes costs, as required under the act.

With respect to clause 151, the FRCC has examined the proposed legislative amendment and has determined that it is inhibiting the ability of shippers to economically acquire their own car supply; and secondly, it is impeding private sector shops from successfully carrying out the maintenance of the government fleet where it is the lowest-cost option. Both of these are important if the transportation system is to effectively serve the grain industry.

• (1550)

In a circumstance where government-supplied cars are to be provided to the railways on a full-service basis—that is, the railways are not responsible for maintenance costs, or are removed from railway service and leased directly to shippers of statutory grains on a full-service leased basis—no clear provisions exist in the act to remove the maintenance cost embedded in the revenue cap for these cars. As a result, a situation could exist where the railways are being paid for maintaining cars that they are no longer maintaining.

The FRCC recommends that paragraph 151.(4)(c) be amended to state:

The Agency shall make adjustments to the index to reflect the changes in costs incurred by the prescribed railway companies as a result of the sale, lease, change in lease terms or other disposal or withdrawal from service of government hopper cars.

Finally, it is common practice for shippers in the business of moving bulk commodities to acquire rail cars to ensure they have the capacity to meet market demands. The act supports this practice. Subsection 113.(3) of the act states:

Where a shipper provides rolling stock for the carriage by the railway company of the shipper's traffic, the company shall, at the request of the shipper, establish specific reasonable compensation to the shipper in a tariff for the provision of rolling stock.

However, in the case of statutory grain movements, the legislation does not easily accommodate this practice. In some circumstances, the affected railway may not be able to recoup the compensation it provided to the shipper; in other cases, the railway may be compensated again for revenues that it's already entitled to under the revenue cap.

The agency requires the clear authority to assess the circumstances and permit an adjustment to the revenue cap that deals fairly with both the railway and the shipper. The FRCC recommends that paragraph 150.(3)(a) of the act be amended to state:

For the purpose of this section, a prescribed railway company's revenue for the movement of grain in a crop year shall not include

(a) incentives, rebates or any similar reductions paid or allowed by the company,

—and this is the addition—

including reasonable compensation paid by the company to a shipper for the provision of rolling stock for the carriage by the railway company of the shipper's grain;

I look forward to discussing these issues as well as any other issues of interest to the committee during the question period. I also hope we have an opportunity to explore the FRCC's other recommendations.

•(1555)

The Chair: Thank you, Mr. Churko.

Questions? Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Thank you, gentlemen.

My questions are mainly to Mr. Churko.

While the Canadian Wheat Board is extremely important to western farmers as a marketing institution, transportation, especially in your area, is really functional to marketing. I don't think a lot of people understand that in the country. You're 900 miles from tidewater, on average, and it's extremely crucial that the railways do work in your interest.

There's no question that, from my experience, Transport Canada was always opposed to the FRCC's proposal, which would have given producers a little more marketing clout in terms of dealing with the railways. In any event, the new government took Transport Canada's recommendations, which is as much as not the railway's recommendation, and broke that agreement.

The fact of the matter is, I think you said the figures were somewhere close to \$40 million per year, in terms of overcharged maintenance. They've been doing that for a number of years. Do you think it's right that they basically get to keep those moneys that they've gouged from farmers over all those years?

Mr. Bernie Churko: Well, Mr. Easter, there are a couple of issues there, I suppose.

First of all, what it actually costs for the railway to maintain the cars is really unknown. Whether the railway has truly gouged the farmer or not, I'm not prepared to say. However, we do know that private shops throughout North America could have maintained those cars for a much lower price. As a result, farmers have overpaid and they have paid substantially. For the federal government fleet, we estimate \$40 million per year, if you look at adding the Wheat Board and the other provincial governments' fleet. That's a substantial amount that has come out of, essentially, the producers' pockets for a long time. I think the FRCC has gone on record as asking the Auditor General to look into that to see, in fact, if the farmers had paid excessively over all that time period.

Hon. Wayne Easter: Certainly one of our problems there is on getting the documentation from the Canadian Transportation Commission to really compare the numbers.

I appreciate the fact that you put two or three recommended amendments for the committee's consideration, and we'll see them in hard copy later. On the last one you mentioned under section 150(3)(a), I believe it was to try to achieve reasonable compensation.

Is there any kind of an appeal? When you get into those kinds of matters, there's always an argument over who's right and who's wrong. If you don't get it, are you suggesting any kind of an appeal process to that effect?

•(1600)

Mr. Bernie Churko: Mr. Easter, if it isn't statutory grain, the provisions in the legislation seem to work very well for most commodities.

There is an appeal mechanism through the agency if there is some disagreement relative to compensation on the cars. The complexity comes around the fact that there's a revenue cap, an averaging process, and all kinds of complexities such that it is very difficult for shippers moving commodity grain to acquire a car supply, as others do, to ensure they can meet market needs.

The interpretation from our legal counsel is that it's unclear. As a result, there's a tendency for shippers to not move in that area because it becomes very costly to go through a process of level-of-service complaints with the agency.

We think clarification would clearly benefit shippers, especially secondary processors that have contacted us for car supply. It would then be clear that they could get the cars and adequate compensation and at the same time the railway would be treated fairly. I think it's a combination to ensure that if the railway pays for compensation, they are not penalized under the revenue cap.

Hon. Wayne Easter: There's no question that the railways need to be treated fairly as well, and I wouldn't suggest otherwise, but all the power often seems to be on their side.

One of the difficulties in dealing with any of these issues, Mr. Chair, is on how to get real figures when the primary source, as Bernie said, for costing figures is the railways themselves.

Do you have any suggestions on ways for perhaps an independent body that's not so closely tied to the railways to do a better analysis on those figures so that farmers and primary producers can have some confidence that they're getting a fair deal when it comes to dealing with the costs the railways say are in the system?

Mr. Bernie Churko: I can only speak to the maintenance issue because that's where we went through a fairly extensive study. It was not difficult to get figures from those that carry out maintenance on similar kinds of equipment throughout North America. In that case, I think we were able to come up with a number that, quite frankly, is significantly lower than the costs being charged in the revenue gap.

I think the point we were trying to make in this submission as well is in our recommendation number six. What it costs the railway is one issue; the second issue is that we should have a mechanism whereby if the private sector shops can do it for a lower cost, it should be relatively easy for that to happen.

I don't think the legislation as it currently exists and the practices by Transport Canada historically have allowed those private shops to actually compete for the work.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

First of all, Mr. Churko, you can rest assured that the Bloc Québécois will support you with regard to farmers' requests. My first questions are not for you; they are for Mr. Chouinard and Mr. Gauthier and deal with noise.

It is time we settle the noise problem. We have been talking about it here for too long. We need a bill to deal with this matter.

In the past, when I worked at the Union des municipalités du Québec, I had the opportunity to visit the Joffre marshalling yard along with the mayor at the time, Mr. Lemaire. As well, as Bloc Québécois transport critic, I have witnessed the problems you speak of.

We are about to do a clause by clause consideration of the bill. As the saying goes, the devil is in the details. We will be dealing with the details next week. Rest assured that we will settle a number of them.

Regarding the definition of "unreasonable noise" contained in the bill, I have been convinced that it is not the best term to use. There are, however, two versions. The City of Lévis has defended its position of "limiting the damages to a minimum". The City of Québec would have preferred "the least noise possible".

Once again, words are important. One thing is certain: if it is a question of "limiting the damages to a minimum", that extends beyond the issue of noise. But if it is only a matter of "the least noise possible", then we only deal with noise.

Would you like us to be beyond the simple issue of "noise" to the issue of "damage"? I know full well that where you come from, there was a lot of analyses of what happened at Oakville and the decision that was handed down, because Transport Canada became interested

in the matter. I know that you have followed the matter very closely. What do you suggest we do in this regard?

• (1605)

Mr. Ghyslain Chouinard: Our position is quite clear. The concept of "reasonable noise" is rather vague. That is why I prefer using the term "nuisance". We have to go beyond noise. Noise can be measured with a decibel meter, and standards can be established, as has done the WHO, which is an international organization. I do not think we can find faults with those standards, because they are not quantified in an empiric manner. In fact, the measurement of noise is not totally speculative; noise is measurable.

Furthermore, on a more general level, we hope that the Department of Transport give back more powers to the Canadian Transportation Agency, or CTA, by establishing clear rules, standards and procedures. In fact, we would ask you to avoid using the term "reasonable". We know very well that, over the past few years, all initiatives dealing with train whistles and marshalling yard noise have been stifled by the word "reasonable". Mediation never got beyond "reasonable noise".

Do you think it is reasonable, Mr. Laframboise, and you, sirs, to be awoken at 3 o'clock in the morning by a "slam" in a marshalling yard, because you are convinced that a 747 aircraft crashed on your street? You have already visited the Joffre marshalling yard, so you know it is a chronic situation. We are not talking about sporadic noise, but about a chronic situation. Each and every night, there are two or three such "slam". The train whistle is heard regularly, 20 times.

I prefer using the word "nuisance", because noise has already been measured. The Supreme Court of Canada has ruled, for example, that the City of Montreal had jurisdiction over nuisances caused by noise in a bar, among other places. I am convinced that the bar in question generated a lot less noise than a two-stroke diesel engine locomotive running full blast in a marshalling yard.

We believe that the municipal and provincial regulations are there to prevent nuisances, and not only noise. There is no reason why the railway industry should not be subject to them.

Mr. Mario Laframboise: Here is our problem: the Constitution does not subject the federal government to provincial or municipal legislation. You are preaching to the choir. It would have been preferable to have the railway companies governed by, at the very least, municipal bylaws. We know that the municipalities now have all of the equipment they need to respect the standards. There is no constitutional requirement for the federal government to abide by provincial and municipal legislation. This could lead the railways to challenge the constitutionality of anything that we might table.

That is why we should consider giving more power to the agency.

Mr. Ghyslain Chouinard: In fact, Mr. Laframboise, that is exactly what we are suggesting. That is why we are here. There are many types of nuisance that contravene municipal and provincial laws. However, we want the CTA to have more power to act in the specific area of the widespread nuisance caused by the railway companies.

•(1610)

Mr. Mario Laframboise: When you say “nuisance”—and I like that term—, it means more than just noise.

Apart from the noise, can you put up with the vibrations and the emissions alone?

Mr. Ghyslain Chouinard: Monsieur Laframboise, gentlemen, if I may take a moment of your time, I would like to explain something to you. I am a long time resident of the area next to the Joffre shunting yard.

When you live next door to a shunting yard, you have to take a white cloth and wipe down your resin patio table every day, and at the end of that same day—not three weeks later—, the cloth is black. I moved just recently and I can assure you that where I live now, when we wipe down the patio table at the end of the week, the cloth is nowhere near as black as it used to be.

We are very concerned about the emissions caused by the two-stroke diesel locomotive engines. At a time when the Minister of the Environment and the Prime Minister are talking about a Canadian act to regulate air quality or “something else”, we are quite worried that the railway companies, which come under federal jurisdiction, might totally escape the grasp of any future legislation.

I am talking about a nuisance: it can even stop traffic within an entire city. It is a nuisance when industries and companies are wasting time because there is a train sitting at the level crossing for half an hour, as is regularly the case in Charny.

A voice: It is an emergency.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian: Thank you very much, Mr. Chair, and thank you to the witnesses for being here today.

I'll start with Mr. Churko. We appreciate your coming before the committee today.

You made a couple of comments around the costings of rail cars, that the costings come from the railways themselves, which is a real problem for farmers. There is no doubt about that. Indeed, there is no process now for involving stakeholders, the farmers themselves, in the costing around rail cars.

I'd like you to go into some detail about what process you would recommend and whether or not you believe it's germane to Bill C-11 and whether there are possible amendments we could bring forward to that.

Mr. Bernie Churko: Thank you.

I'll think about the second one, but I'd have to go back to when I first started in the sector side, which goes back to the mid-1970s when we had the royal commission on the cost of moving grain. There has been a process for some time whereby the outside organizations—farm organizations as well as the railways—provide information to a third party, so it can determine as well as possible what is fair and reasonable. Our concern is we don't have a process that allows other parties to put forward their views. If it's just the railway and the agency, unfortunately—and we have a lot of respect

for the agency—history has suggested that quite often the railways come off first best rather than second best.

It's important that there be an open process, open from the perspective of players coming in, recognizing that the proprietary information of the railway has to be respected, but that other stakeholders have a chance to come in to ensure there is balance at the table. We very much support the fact that clause 57 has been introduced, but if it doesn't realize the kinds of benefits that it should for farmers, then tens of millions of dollars could be lost once again. We went through this costing process previously. That's how we came up with the current numbers and a revenue cap. It has not served us well in that respect.

The concern we expressed, as we go forward with implementing clause 57, was to ensure other experts are allowed to bring their views to the table when the agency goes through that exercise.

Mr. Peter Julian: Okay, let me come back to my second question, which is the issue of getting the stakeholders involved.

I gather you're saying beyond the agency, right?

Mr. Bernie Churko: That's correct.

Even if we look at the example of indexing—the indexing provisions in sections 150 and 151—in that case, the agency brings affected stakeholders in on a confidential basis. Everyone has their chance to make their views known at the table, before they ultimately make the decision on the index for the revenue cap.

At minimum, we would say this should have been available in the past, and of course this is a large multi-million-dollar issue. There have been times when experts in the field have been given access to railway information on a confidential basis to be able to debate their own analysis and make the case as to what the correct number should be.

I'm saying that part of the exercise is that we need other stakeholders brought into this process when the agency deals with clause 57.

Second, there is a benchmark out there, and if there's a divergence in terms of the numbers we get from the railway and what's actually in the industry, I think someone—and probably the agency—should be empowered to go out there and determine what the difference is and why.

Third, as we mentioned, if the private shops can do it for less, why would we not let them carry it out and lower the costs for farmers, as opposed to necessarily leaving it with the railways?

•(1615)

Mr. Peter Julian: Mr. Chair, do I still have a few minutes?

The Chair: You do.

Mr. Peter Julian: Thank you for that.

[*Translation*]

I would now like to come back to Messrs. Chouinard and Gauthier.

A number of witnesses told us about the noise caused by the railways. I come from a riding where there is a shunting yard.

Two approaches were suggested to the railway to help alleviate the noise problem in urban centres, because the shunting yard came first, then, the population increased, as is currently the case in Western Canada and in British Columbia.

One approach would be to limit the yard's activities. In other words, certain operations could not take place in city centres, but outside the city limits. In Vancouver, this would mean settling in the suburbs, around Port Mann, instead of in New Westminster, which is closer to the centre.

Another possibility would be to limit the time during which these companies can carry out their activities. In other words, they could operate during the day or during office hours. Those are the two approaches.

You also spoke about limiting the decibel level.

Do you see any pros or cons in these three approaches: first, restricting the activities; then, restricting the hours; and, finally, setting a limit for the decibel level?

Mr. Jean R. Gauthier: I think the first thing to do would be to restrict the activities. People are annoyed. Someone wondered earlier whether or not this came under federal, provincial or municipal jurisdiction. The average citizen could not care less about that. In the end, it will simply lead to civil disobedience. If the residents are loosing money because the property values are dropping, they will not be happy. They do not really care if it is a federal, provincial or municipal jurisdiction.

In our brief, the first suggestion we would make to reduce the noise while awaiting a solution would be to stop the trains from running at night. Then, the trains themselves should be shorter, and, finally, noise barriers should be built.

I am partial to the latter suggestion, because there is no way around having shunting yards near the city centres. And noise barriers can be built. I do not mean building noise barriers around the shunting yard, but, rather, along the tracks themselves, in order to minimize impact noise.

I live one and one-half kilometre away from the Joffre shunting yard. Even with the windows closed, the noise still wakes me at 3 or 4 o'clock in the morning. It is even worse one and one-half kilometre away!

What are we to do? Until we find a way to deal with this, we will have to restrict the hours and the activities. We have to find a formula before people become so irritated that the situation degenerates into civil disobedience. In my opinion, that is where we are heading.

The federal government let this situation fester for 20 years. Companies generating \$100 million a month can invest in research, in means and mechanisms to improve the situation at level crossings and reduce the noise from railway yards, etc. It is up to the company to take the lead. I do not think these companies should be subsidized. They already have an advantage through the infrastructures that Canadian taxpayers have provided.

All three suggestions are good ones. Which one should we choose? I think that, whatever else happens, we must aim to reduce

the noise as soon as possible. If the rail yards have to stop operating over night, if we have to limit the number of rail cars to reduce the noise... There is also the grinding of the wheels. The wheels make an extremely irritating noise, because the rails are worn, and so are the wheels.

In Sweden, they have a metal strip that compensates for the wear. They are used everywhere. These strips are used in the city centres to reduce wheel noise. You can hardly stand the noise, when you live next to the shunting yard. So you see, there is more than one subject...

• (1620)

[English]

The Chair: Thank you, Mr. Gauthier. I'm sorry to interrupt.

[Translation]

Mr. Jean R. Gauthier: Thank you. I have managed to say just about everything that I wanted to.

[English]

The Chair: Mr. Fast.

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

Thank you, all three of you, for attending today. Your information will be very helpful as we continue to develop policy in this area.

I'd like to address a couple of questions to Messieurs Gauthier and Chouinard.

In your brief you covered a whole gamut of issues: hazardous materials, blocking of rail crossings, maintenance, safety, pollution, diesel pollution, etc., and also the issue of noise. I'd like to focus a bit on the noise, because it's one of the things that are covered by this bill.

You suggest in your brief that we should be fully enforcing the WHO's standards for noise—being 45 decibels during the night and 55 decibels during the day. However, later, on page 6, where you deal with some of your conclusions, you refer to the fact that you'd like to see municipal and provincial regulations enforced and that there's no reason why the railway industry should not be subject to them.

As you know, across Canada we have a patchwork of noise bylaws and nuisance bylaws. Every municipality has its own bylaws, and they're typically unique to that municipality.

In fact, we had a number of representatives from the city of New Westminster before us a number of weeks ago, and Mr. Julian may want to correct me, but as I remember... Well, there were different noise bylaws, but there was an exception for construction noise from six in the morning to eight in the evening, which is probably inconsistent with the World Health Organization standards, especially when you're dealing with construction, piledriving, and machinery.

I'm wondering, first of all, what would you suggest be done to harmonize federal regulations—if in fact we propose federal regulations—with municipal bylaws and regulations?

Mr. Ghyslain Chouinard: Probably a pan-Canadian consultation with cities, to harmonize regulations that cover the noise generated by train traffic.

Mr. Ed Fast: So you're talking about a nation-wide consultation to try to harmonize all those regulations?

Mr. Ghyslain Chouinard: Yes, sir.

Mr. Ed Fast: It may be difficult to do that within the framework you've set out, which is the World Health Organization. Or are you suggesting the WHO guidelines should be exactly that: a guideline?

Mr. Ghyslain Chouinard: It should be followed as a guideline, you know, like a buoy is to navigation—an acceptable standard.

Mr. Jean R. Gauthier: They would definitely accept standards—reasonable standards, for sure—that would be acceptable to everyone.

Mr. Ed Fast: I think you understand that we're trying to provide some balance between the industry, which is critical to the development of our nation—transportation, not only of goods, but of people across the country—and the safety and health of residents in the various communities.

Your brief also suggests that until further regulations are in place to protect human health and safety that trains be prohibited from travelling through towns during the night. Were you serious in that assertion?

Mr. Ghyslain Chouinard: I'm not quite sure if it was translated correctly.

We're not suggesting that the trains be stopped during the night. But I would promote something such as Mr. Julian said, a multi-solution, to reduce the activities during the night and permit them in the yards during the day. We don't want to completely stop the trains. We fully agree that the transportation industry in Canada is probably the most important infrastructure of our country. We do believe this, wholeheartedly. But we also believe that the citizens of this country deserve a quality of living that has a strict minimum of noise for people.

•(1625)

Mr. Ed Fast: I want to read a quote from your presentation:

Until such time as a set of effective measures is implemented to bring about a more harmonious coexistence between people and trains, the number of cars per consist should be drastically reduced and movement of trains at night banned in towns and villages.

Could you perhaps clarify that? It sounds like a really extreme solution.

Mr. Jean R. Gauthier: It's mostly what I was saying a few minutes ago. If you can't find an alternative because of the jurisdiction, federal, provincial, or municipal, and they hide behind that to say nobody can touch them, it just doesn't make sense. Until such time as we find something acceptable to the municipalities and to the provincial and federal levels, the industry, which is making billions of dollars, should not just hide behind the fact that they're untouchable.

In order to have a reaction on their part, since they're making a pile of money, it's up to them to come up with solutions. We're suggesting a few, but they should invest in the solutions. Until that time, sit down and take it easy. They should find a solution, and then

they'd be on. Run at night. I don't care. But until they find a solution, they can't, because thousands of people in this municipality are suffering as a result of that.

I can't expect much cooperation on their part. We have Saint-Cyrille-de-Wendover, which is a situation that is unbelievable. For thirteen years, they've been asking CN to stop the whistle. They've negotiated with CN. I've read so much about it. I talked to the manager of the city. I couldn't believe it. Today, thirteen years later, they still have to invest \$200,000 to find a sensor in order to know whether the barrier should be down or be up, depending on the speed of the train.

We are at the point where I call it *harcèlement*—the word in English is “harassment”—to the point where they come up with things that are unbelievable. I can't think of a small municipality that can invest such an amount of money. In the case of Saint-Cyrille-de-Wendover, if they do that, they are going to spend almost half a million to find an alternative to the pollution coming from an organization that is using the infrastructure of Canadians. It just doesn't make sense. Stop hiding behind the fact that it's federal or provincial. Find the solution. They have to invest into it.

The Chair: Thank you, Mr. Gauthier.

With that, unfortunately our time with this group has expired. I would like to thank Mr. Gauthier, Mr. Chouinard, and Mr. Churko.

The committee takes your presentation seriously, and we will consider all of your suggestions when we work through the bill clause by clause.

[Translation]

Mr. Jean R. Gauthier: Thank you, Mr. Chairman.

[English]

The Chair: I think we'll suspend for two minutes.

•(1625)

_____ (Pause) _____

•(1635)

The Chair: I would ask members to please take their seats and we can get on with the next group.

At the first meeting the Transportation Agency attended, it was thought by members that we would bring you back at the end of the hearings and ask more questions. I don't know if you have a prepared presentation or if you would be prepared to go right into questions. I would ask and see what your position is.

Mr. Dufault.

Mr. Gilles Dufault (Acting Chairman, Canadian Transportation Agency): Thank you, Mr. Chair and members of the committee.

[Translation]

We are pleased to be here this afternoon to answer questions that members may have on Bill C-11.

As was the case last time, I have with me today, from the Canadian Transportation Agency, Mr. Seymour Isenberg, Director General Rail and Marine Branch, and Ms. Joan MacDonald, Director General, Air and Accessible Transportation Branch.

[English]

Mr. Chair, we're ready to answer questions of the members of the committee.

The Chair: All right. Thank you very much and welcome.

I believe Mr. McGuinty is going to lead us off.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

Bonsoir, Monsieur Dufault.

Ms. MacDonald and Mr. Isenberg, welcome home. Welcome back. Thanks for coming.

I think we're all very happy to have you back, because we're hoping you've had an opportunity to be briefed on the evidence that has been presented by different witnesses over the last several weeks, since your first appearance. I think it would be very helpful for me as an MP, and I hope my colleagues, to hear from you in terms of whether you've had an opportunity to synthesize or react to some of the suggestions that have been made.

I want to start with a couple of areas that are hanging out there. It would be important to get your feedback on your initial reaction, perhaps, or more thoughtful reaction, to some of the areas that were brought to our attention.

First I want to bring up with you this question of sanctions and the sanctionability of offences. Have you had any chance to look at whether or not we should be spelling out in more clear detail the question of sanctions?

I'd ask you to just hold that for a second, because I also want to link that to the question of whether or not in the bill, which I think calls upon the government to call upon you to formulate guidelines for a dispute resolution mechanism, we ought to be looking to prescribe with more specificity how the agency should be dealing with disputes.

We've had mixed evidence. Some have said we should go further; others have said we should leave it to the agency, and so on. So I want to connect those two, if I could, and get your reaction.

Mr. Gilles Dufault: Merci, Monsieur McGuinty.

In terms of sanctions, I think in our power we can order some modifications. If we talk about noise, for instance, we can order modifications and we can order things to the railway if that is not followed. We have the power of a superior court, and if that is not followed, we can ask the Federal Court to make sure that those sanctions are enforced. We feel that we have all the powers to do what is required by the agency under the proposal that is in front of you.

• (1640)

Mr. David McGuinty: Have you given any more thought, then, to what sanctions would look like in cases of noise complaints, if you have the full gamut, the full spectrum?

Mr. Gilles Dufault: It could be to take corrective measures.

I'd like to ask Seymour Isenberg to give you more information on that, because it's his field.

Mr. Seymour Isenberg (Director General, Rail and Marine Branch, Canadian Transportation Agency): Mr. McGuinty, I think the agency has the flexibility to take remedial measures when necessary. Remember that according to the act that's proposed, this will be the end product of what, if you like, didn't work. If negotiations didn't work, if mediation didn't work, if we didn't have a cooperative process to solve something, the agency would look into the situation, and where necessary, according to the decision the agency makes, they would render a decision that is in effect an official order. An order can be made, an order of a superior court in whatever province we're in, or an order of the Federal Court.

I think you had testimony, if I look back at what came in over the last couple of weeks, from the Railway Association that in fact they respect and follow agency orders, and I don't think we've ever had a problem like that. Of course, the party has the right to appeal a decision of the agency—that's a democratic right they have—but if we issue an order and it's not appealed, they follow our orders, so I could give you some comfort there that yes, it would be possible.

In terms of guidelines for dispute resolution, in anticipation of this legislation the agency is already starting to work internally on the development of guidelines that would cover a series of elements. Of course we're waiting to see what the final bill looks like before going out and consulting on this, and let me assure the members of the committee that the agency has guidelines in a wide variety of areas. It has guidelines in accessible transportation. It has guidelines in marine. It has guidelines that work effectively; they're done in consultation with others. I think you can take some comfort from the fact that we're used to working with such guidelines.

One of the things guidelines give you is flexibility, whereas if you stick to a regulation, it's tight in the law, and you're stuck with it until or if somebody changes it. We're quite comfortable with that.

Mr. David McGuinty: Could I ask a related question, then? We had some testimony from CN Rail that informed us that the gross revenues last year were \$7 billion, and that they were paying somewhere in the range of \$650 million in taxes this year.

I'd compare that to a citizens' group that's having a problem with noise. Do you anticipate in your guidelines, or is there anywhere in your structure now, that you provide support for citizens' groups who will be involved, or potentially involved, in a dispute resolution process? Can you imagine a scenario in which the CTA will in fact support fledgling community groups that are dealing with, in some cases, a company with 28 or 30 full-time government relations officers?

Mr. Seymour Isenberg: If I can be of some comfort in this sense, the agency is a relatively easy place for citizens to interact with, and when there's an issue of going to where the affected community is, we have a history of being out there, of touching the problem. I would expect that this would work in the same way; we intend to consult and we intend to consult with interested parties. We will have a number of ways in which citizens can interact with us. Obviously the government has Internet access and we will use that, but we will use other methods, and that will be laid out in due time.

The Chair: Monsieur Laframboise is next.

[Translation]

Mr. Mario Laframboise: Thank you, Mr. Chairman. I will be splitting my time with Mr. Carrier.

I have a quick question for you, Ms. MacDonald. Lately, I have been bombarded with e-mails about section 27 and how it affects air fare. I think that the industry would like us to tackle, once and for all, the whole issue of pricing and advertising, so that when an add is published, the terms are crystal clear, and there are no hidden costs. The new proposed clause 86.1 would allow the agency to make regulations respecting advertising.

If we were to say, instead, that the agency must regulate advertising, would you be in agreement with that and would it solve the problem once and for all?

•(1645)

[English]

Mrs. Joan MacDonald (Director General, Air and Accessible Transportation Branch, Canadian Transportation Agency): Certainly if the minister gives us the direction to make those regulations, I believe the way it's structured in the bill it should allow us to address that. As you know, the way the bill is set out now, it says that when prices or fares are advertised, they should be structured in such a way that the traveller will know what the total price of the fare will be, the cost to be paid. When we develop those regulations, we'll do it in consultation with the consumer groups, with the industry and with other interested parties to make sure that the structure of the ad is clear to people.

[Translation]

Mr. Mario Laframboise: The groups to which I am referring do not want the minister to have to make a recommendation, they would prefer to have the agency make the decision. Do you think the agency could be asked to set these standards? Would you agree to having that in the act? I know that you can't comment on ministerial decisions, but if you had to include provisions in the act, if you were asked to do that, would you be able to?

[English]

Mrs. Joan MacDonald: Certainly you'll know that under section 86 the agency does have the power to make regulations on a variety of areas. So we are accustomed to the process in terms of developing regulations and consulting with interested parties.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): Good afternoon.

Along the same lines, the clause relating to noise also says that the agency can establish guidelines. Which do you prefer: the term « may establish » or « must establish »? Would you prefer to have the freedom to set guidelines or would you like the act to force you to do so?

Mr. Gilles Dufault: As I explained when we appeared before the committee last time, we are preparing the conceptual framework for the guidelines. As soon as the legislation is implemented, we will undertake a consultation process with all of the country's stakeholders, in order to establish these guidelines. So, it makes no difference if it is an authority or an obligation, we will be doing it in any case.

Mr. Robert Carrier: Once again, on the guidelines that you are preparing: the bill deals with noise. So, as I understand it, you are working on noise guidelines. But the various groups who have appeared before us have also spoken about nuisances such as vibrations and emissions, as we heard earlier.

Do you also have guidelines in the works to deal with those issues?

Mr. Gilles Dufault: So far, we are concentrating on noise.

Mr. Robert Carrier: Have you received any complaints from people who are upset about vibrations and fuel emissions from locomotives?

Mr. Gilles Dufault: I think Seymour would be the best one to answer that question.

Mr. Seymour Isenberg: May I respond in English?

[English]

Prior to 2003, we received numerous complaints on issues that covered a broader spectrum than noise. Often, noise is part of the overall issue, whether there's noise, vibration, and so on. We were successfully able to handle a number of these cases to a positive resolution. I'm confident that under the proposed legislation that's there now, a lot of other factors will be able to be incorporated in a solution. Remember that the objective, really, if you look at the structure of it, is to get the parties together, the carriers with the groups that are affected by the carriers, to see what can be done to fix the situation. Hopefully that's at the stage at which most of it will be repaired. If that doesn't work, then it will fall to the agency to do a formal study with orders. Our powers, of course, will relate to what's in the law.

If I can give you a bit of comfort, though, generally other factors are part of the noise factor. It starts with noise, and other factors are there, such as smell, diesel, lights, and so on.

•(1650)

The Chair: Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): What role do you see your agency playing in the mediation process, in disputes between parties?

Mr. Seymour Isenberg: First of all, the agency offers mediation in every case that comes before it. We have many professionally trained mediators. We in fact trained ourselves in this area. Over the past two or three years, we have been quite successful in settling disputes through mediation in all the modes of transportation. Noise is one area that lends itself to mediation. You're looking for collaborative measures, identifying the issues, seeing what can be changed on the part of the carriers, and so on. The agency's quite proud of the mediation it offers.

Ms. Olivia Chow: How do you review violations? The act said the noise environment needs to be safe and secure. How would you conduct your reviews? How do you assess violations? What sanctions would you give?

General guidelines are fine, but sometimes guidelines can be vague and subject to misinterpretation. This could lead to arbitrary decisions. If the sanctions are not clear, it could lead to misunderstandings.

Mr. Seymour Isenberg: Guidelines are an overall framework to handle the situation. We react to issues upon complaint. The problem would be presented to us, so by application we would know what the problem is. The guidelines are designed to be general and cover virtually all possibilities that could come before us. They structure the process of what's going to be covered, the responsibilities of the initial parties to resolve it themselves, and how to approach the agency to go through an official case. In the case of a formal approach, we will also offer our mediation services. Our mediation has a reasonably good track record.

Ms. Olivia Chow: Say there's a noise complaint, do you have a timeline for resolving it?

Mr. Seymour Isenberg: According to the Canada Transportation Act, all cases before the agency have to be resolved within 120 working days unless the parties themselves agree to an extension.

Ms. Olivia Chow: I'm not sure I understand the licensing, the changing. It's in the part that talks about making the fare known in a public place. I think it's in clause 20: "available for public inspection at the business offices of the licensee". How would the public know how to get that? Is it on the Internet, or where would it be?

Mrs. Joan MacDonald: It covers two aspects: their physical and Internet locations.

Ms. Olivia Chow: What does "display in a prominent place at the business offices of the licensee a sign..." mean?

Mrs. Joan MacDonald: It means a sign indicating that they're available as well as making them available on the Internet, which is where a lot more people are shopping these days.

• (1655)

Ms. Olivia Chow: Would you, with that licence, also make public why the operation licences have been...? Would it actually also go into the...? This is the licence?

Mrs. Joan MacDonald: This is for their tariff, their terms and conditions of carriage.

Ms. Olivia Chow: That would all be made public?

Mrs. Joan MacDonald: Yes.

The Chair: Mr. Blaney.

[Translation]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Welcome back.

We have indeed heard from quite a number of witnesses since your last visit here. You might even be interested to know that shunting yard noise is on the front page of my local newspaper. We have heard from witnesses, and we have even had recommendations. If things follow the normal course, you will soon be in a position to enforce the act.

I would like your opinion on some of the amendments that have been put forward, since we are now at the clause by clause phase of the bill and we are making amendments. My comments deal mostly with clause 95.1, which relates to noise. As you heard earlier, it has been suggested that we use the term "nuisance" rather than "unreasonable noise". I would like to know if you have a preference, or if either one of these terms could make things more difficult for you. In fact I think that the purpose is to ensure that everything is clear and to eliminate any grey areas. We would really like this bill to

be workable so that you may use it in the knowledge that the legislator's intention is clear.

There are a few things that I would like to discuss with you. The first one deals with "unreasonable noise"; it was suggested that we use the term "nuisance", as it relates to situations that can affect public health. I would like your opinion on that.

Would you prefer to comment on each subject as it is raised or would you like me to list all of them first?

Mr. Gilles Dufault: I can respond as we go along: it will be easier that way.

Mr. Steven Blaney: Okay.

Mr. Gilles Dufault: The Agency has experience with reasonable and unreasonable situations. We operate within the Transportation Act as well as in piloting and some provisions of Canada's Marine Act. We have the expertise and we are used to dealing with noise or with reasonable and unreasonable situations. The term "nuisance" is also confusing. What represents a nuisance? It is no more specific than what is reasonable or unreasonable. There is always a limit. We can play with semantics, but at some point, if you are suggesting that we use the term "unreasonable noise", then I imagine that is what is used by Transport Canada, by the Minister, and then, in consultations with the Agency, among other things, after which it was decided that it is the most appropriate term, given the circumstances, that will allow us to do our job, to enforce the legislation and to interpret it properly.

Mr. Steven Blaney: Could the term "unreasonable noise", as you seem to be implying, cause you to issue guidelines that might contain specific standards expressed in decibel levels? Is this something that you could...?

Mr. Gilles Dufault: The guidelines will be drafted. The use of decibels is only one way to assess noise. It will certainly be factored in when we consider our approach. They are guidelines, and not regulations. Guidelines are the preferred option because they will allow us to undertake a national consultation and come up with something that, once we have met with all of the stakeholders, including the municipalities, the provinces, citizen organizations, the railways, will be available within four to six months.

Mr. Steven Blaney: Very well. I have another question for you; it is about the time that is allocated to mediation. We are told that, in the current Act, the timeframe is 60 days. You said earlier that 30 working days is the average time for mediation.

Do you agree with the 30-day timeframe? My question is for Mr. Isenberg.

Mr. Gilles Dufault: Perhaps, because I...

• (1700)

Mr. Steven Blaney: Yes, that is it, I think he knows what I am talking about.

[English]

Mr. Seymour Isenberg: In the normal course of action in mediation we are able to resolve something in a relatively short time. If it's an official case before the agency the standard timeline of the agency case takes precedence.

Remember that we're operating in a court atmosphere with natural justice. We have to give all parties time to look at the issue, present their evidence, evaluate their evidence, and let the members make a decision and issue an official decision. So it's a constrained timeframe, but it has been operating rather successfully over the last ten years that the act has been in place.

[Translation]

Mr. Steven Blaney: You say that 30 days is a constrained timeframe, but you are able to manage with it. Is that what you are saying, Mr. Isenberg?

[English]

Mr. Seymour Isenberg: I'm essentially saying that the agency's normal 120 days would be operative if there were an official case before us.

Mr. Steven Blaney: How many days?

Mr. Seymour Isenberg: One hundred and twenty days is the law under the act. Obviously when we go to mediation we try to expedite the case as quickly as possible.

I should also point out that the agency can make an order out of a mediation if both parties agree. It has done so in the past in a number of different areas, particularly rail infrastructure cases.

Sometimes the parties want that because they want an official record. Mediation by itself is a confidential process. We don't discuss it outside the case itself. Sometimes the parties want it to become public, and we can do this in a number of ways. One is by their agreement, and the other is by issuing an official order, which happens.

The Chair: Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Thank you.

My questions relate to rail issues and particularly the noise complaint aspect. That's been the subject of call-ins we've had on the telephone conference and the most recent presentation preceding yours.

How is the process of mediation covered? In other words, if there's a complaint from some location in the country, do you go to them, or do they come to you? What about the cost to citizens? Do they have to bear their own costs in appearing before you?

Mr. Seymour Isenberg: The way this process is envisaged right now, in the first stage the parties having a problem would be encouraged to get together with the carriers to see if they could solve the problems among themselves. Should that not happen, they could apply to the agency under our normal standard process and we would open our process, in which case we would interact with the parties in the most efficient way we could.

Where there's a specific case involved in a distant location, our tendency has been to have staff from the agency go there.

Mr. Don Bell: You talk about having them mediate directly with the railway. I notice that proposed subsection 36.1(4) talks about confidentiality of mediation. If you have a group of two or three residents who are representing 25 to 100 other residents, from my experience as a mayor—and other members of this committee have had municipal experience—they have a responsibility to report to their representatives, their stakeholders, what they're doing and what's going on.

By virtue of this act, is the mere fact they enter the mediation referring to when it comes to you, or when there are discussions with the railway? When it does come to you, what are the restrictions on them being able to go back and get instructions from their group if mediation is suggesting through you that something happened? They have to be able to go back, and you can hardly muzzle 150 residents.

• (1705)

Mr. Seymour Isenberg: Absolutely. Mediation is a collaborative process between parties, and we give the parties what they prefer. In some cases parties prefer confidential discussions because it's an active case before the agency, so that part is confidential. But in other cases they have no desire for confidentiality of any part of the process, in which case there's nothing in our rules that requires that either. So if they want the mediation to take place in some type of public forum or report back publicly, it would be up to the parties. If both parties agree to that, I can't see a problem with it.

Mr. Don Bell: My experience has been with the railways and negotiations for the use of commuter lines. The parallel would be that railways generally don't seem to want to have discussions that are as public as the residents might like.

What happens if the citizens say they want to be able to talk about it and the railways don't?

Mr. Seymour Isenberg: In that case you would not have an effective mediation. One of the first things you have to do in a mediation is settle some of the classic things like whether you have the authority to settle, or whether you agree that it should be confidential or public. How much time do you have? What would be the outcome? Do you want it as an order, a decision, a private agreement?

These kinds of things are usually settled in advance of going to the actual mediation. Where there's a massive disagreement of essential items, then the mediation doesn't take place and it goes to the next stage, which is an official case.

[Translation]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: I would like to come back to Ms. MacDonald.

My hope is that, once we have dealt with this bill, we will see an end to misleading air fare and travel package advertising. That is what I would like to see.

It says in the bill that you may make regulations on the Minister's recommendation. But the Minister has to ask you to do it. Am I understanding that correctly?

[English]

Mr. Joan MacDonald: Yes, that's how the bill is worded now, that it would be upon the minister requesting the agency to make those regulations. If he were to do so, then we would start our consultative process to develop those regulations. Then it would go through the normal regulatory process, which is publication in the *Canada Gazette*.

[Translation]

Mr. Mario Laframboise: Therefore, if I wanted it to be automatic, the text of the bill should state that the Agency must issue guidelines.

I want to avoid any possible misunderstanding. Once the bill becomes law, it must be clearly understood by air carriers and travel agencies that their advertising must state all of the costs related to the purchase, the real cost, including all of the fees.

Have I made myself clear, Mr. Dufault?

Mr. Gilles Dufault: You have made yourself clear. If the bill states that the Minister may request that the Agency do this, then the Agency will have to wait until the Minister makes the request.

Mr. Mario Laframboise: That's correct.

Mr. Gilles Dufault: And if the bill states that the agency must do something, then the agency will do it.

Mr. Mario Laframboise: Agreed.

Mr. Gilles Dufault: That is your problem to deal with.

Mr. Mario Laframboise: Agreed, perfect. That's all it is. I don't want you to feel uncomfortable. I have to interpret...

Mr. Gilles Dufault: No, I am not uncomfortable. Our job is to enforce and interpret the act, and your job is to draft legislation.

Mr. Mario Laframboise: Thank you.

[English]

The Chair: Mr. Storseth.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair.

I want to thank you for coming before us once again. I want to explore a bit what I've heard you mentioning a little, about the marine act and how noise is covered under it.

Would you say there are some similar circumstances—for example, those of residential home owners? Is it a relevant comparison?

Mr. Gilles Dufault: I don't know.

Mr. Seymour Isenberg: I can't recall ever getting a case in the marine area at all. We would, of course, be happy to mediate one if one came in, but normally that isn't part of our overall operations.

Mr. Gilles Dufault: We don't intervene.... In the marine act we intervene on some specific issues, but not noise.

• (1710)

Mr. Brian Storseth: Thank you very much.

I just wanted to clarify that, because I wasn't sure whether I heard it right when you guys were speaking this afternoon.

Mr. Gilles Dufault: I mentioned earlier that we have experience with the notion of reasonableness in the application and interpretation of other acts, such as the marine act, the Pilotage Act, and some parts of the Canada Transportation Act.

Mr. Brian Storseth: So you're referring to the definition of noise in that?

Mr. Gilles Dufault: I'm referring to the interpretation of what is reasonable or not reasonable.

Mr. Brian Storseth: As the agency responsible for the mediation and adjudication process outlined in our dispute resolution section of Bill C-11, do you feel that both the public service providers and the rail companies will be on a level playing field with this, or will there be any inherent advantages for one or the other?

Mr. Seymour Isenberg: I think the mediation process is a very fair and balanced process and allows both sides an equal ability to put their points of view forward.

Let me clarify the difference between the mediation process and our formal process, because there seem to be a couple of questions on this.

The mediation process is a process that has been offered by the agency on a trial basis up to now but will be in the legislation. That is a process that is, in a sense, voluntary on the part of the parties. It's flexible: it could be confidential, or it could be open. And it's a separate process from the regular process, in which you file an official case. It can be part of that, it can be set aside as part of it while the case is held in abeyance, or it can be part of a case in itself.

But the formal process that the agency has when you file an official complaint is structured in the law. There are 120 days to reach a decision. There are rules of procedure for how the case is handled, depending whether it's a file hearing or an oral hearing. Decision is made normally in writing. It's appealable—if we erred in law, to the Federal Court, or to the Governor in Council for any other purpose.

So there are two different processes: one, if you like, informal, but very effective, we like to think—that is mediation—and the other, which is the formal process.

Mr. Gilles Dufault: If I may add, Mr. Blaney was talking about timelines earlier. The formal process has a 120-day time limit, unless the party agrees to have an extension, which is the case in a lot of complex cases. But mediation is driven by the party. It depends on their availability. It depends on the nature of the discussion. It's usually more rapid, but it could take longer.

We'd prefer not to have limits.

Mr. Brian Storseth: Exactly. Thank you. I just wanted to clarify a couple of those things.

The Chair: Thank you, Mr. Storseth.

I would like to thank you again for reappearing. I'm sure that like us, you look forward to the final presentation of the bill.

Thank you very much.

Mr. Gilles Dufault: Thank you very much.

The Chair: I'm going to ask the committee just to stay at the table, and we will move right into Mr. McGuinty's motion.

Mr. David McGuinty: Should I move that motion again? I haven't moved it yet, have I?

It's good to have good staff, Mr. Chairman.

The Chair: We're very fortunate.

Mr. David McGuinty: Thank you, Mr. Wallace. I appreciate your appreciating my humour.

I'd like to move the motion formally, Mr. Chairman.

Mr. Mike Wallace (Burlington, CPC): I'm glad I'm filling in.

Mr. David McGuinty: With humour like that, Mr. Wallace, you have to be Irish.

Mr. Chairman, I move that the committee invite the Minister of Transport, Infrastructure and Communities to appear at its meetings on Tuesday, November 7, 2006, and Thursday, November 9, 2006, to discuss the main estimates for the fiscal year 2006-2007.

• (1715)

The Chair: Thank you, Mr. McGuinty.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

I actually wanted to advise the committee that I did speak to the minister, and he has informed me that he will try to make himself available for at least one of those dates to come in with the department to discuss estimates. At this stage it depends, of course, on his availability. He's trying to reschedule his other appointments, but it looks like Tuesday, November 7, for at least an hour would probably fit with his schedule. I will be able to advise the committee in due course.

[Translation]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: That is why I would like to move an amendment to the motion so that, instead of appearing on Tuesday, November 7 and Thursday, November 9, the minister could appear at committee by November 9, 2006, to discuss the Main Estimates. That would allow him to choose a date. If November 7 is convenient for you, then we can move ahead, but the motion could state "by November 9", to give him a little more leeway. Or are you already prepared to settle on November 7 and agree to appear on that day?

[English]

Mr. Brian Jean: I sort of missed it in the translation, but if I understand it correctly, you want to make a friendly amendment to change it so that he would come in by November 9?

Mr. Mario Laframboise: By November 9.

Mr. Brian Jean: Absolutely. I have no problem with that.

The Chair: You're okay with that.

Ms. Chow.

Ms. Olivia Chow: I haven't looked at the supplementary estimates, but I'm wondering whether the main estimates and the

supplementary... I don't know whether there were any new additions in the supplementary. Maybe there were none. I'm wondering whether you want to just do both at the same time.

That's just a question. Then we wouldn't have to go back into looking at the supplementary. Maybe there are no additions whatsoever, and there's no question. Normally there would be.

The Chair: Mr. Jean.

Mr. Brian Jean: Thank you, sir.

We don't have to review the supplementary estimates until December 15 or thereabouts. Our concern was that we wanted to be able to move the agenda forward of the legislation. Also, we have until November 10 to deal with the main estimates, and that's why we thought we would do that.

Ms. Olivia Chow: You have a deadline.

Mr. Brian Jean: Yes, we have a deadline for the main estimates, and that's why we would prefer doing that, if that would meet the will of the committee, rather than tying ourselves up with something that we'd still have time to do afterwards.

The Chair: The supplementary estimates are separate, yes.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): What is the length of time that the minister will appear for? I believe Mr. Jean said one hour.

Mr. Brian Jean: I said that at this stage it looks like he has at least an hour. We're inviting him, as you know. He's indicated to me that it's likely he's going to have at least an hour, depending on his availability, of course. As you know, this is an invitation, not a summons, and he is, of course, going to come forward and defend the Liberal estimates as best he can.

Mr. Francis Scarpaleggia: That wasn't really my point.

Mr. Brian Jean: That's what they are. They're Liberal estimates.

Mr. Francis Scarpaleggia: For the record, I sit on other committees, and it seems that whenever a minister comes, they only come for an hour. I'm wondering if that's not a strategic move across all committees. I wanted to put that down, and hopefully the minister will stay longer than an hour.

The Chair: It's on the record.

Mr. Storseth, on a point of order.

Mr. Brian Storseth: A point of clarification, I guess, Mr. Chair. I was at the aboriginal affairs committee this morning where the minister stayed for an hour and a half and still took questions beyond that. So it is clearly not a strategy of the government. It is very open and very accountable.

The Chair: That is not a point of order, but a point.

Mr. Francis Scarpaleggia: I appreciate that information.

The Chair: Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): Mr. Chair, it is very telling that they're celebrating an hour and a half, because the reality is that it is very unusual that you don't get two hours with the minister on estimates; it is very, very unusual.

It is not really an invitation. I think that somehow suggests we should appreciate the fact that he is showing up. The reality is that it is expected of a minister to show up to defend his estimates before this committee.

I suggest that we ask him for two hours. I don't care so much whether it is in our normal sitting time, frankly, but I think we need to have the time with the minister to do this. It is an opportunity to discuss generally the minister's work and so on.

The whole notion of it, if he is available and if we make it an hour, is a little bit of a reversal of the way this has generally been done, in my experience.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Scarpaleggia, of course, was on the environment committee when we invited Minister Dion to come, and of course he didn't show up at all. So let's put that in context. Of course, we gave him three weeks to show up, and in this particular case we've given the minister three days.

So I think, with respect, we are inviting the minister to come to do this and at the last minute; if he provides that information to us, I think that is being very reasonable to the committee and very reasonable of the minister, quite frankly.

The Chair: I guess, Mr. McGuinty, you're amenable to the amendment by Mr. Laframboise, so I ask the clerk to read the motion, as amended.

The Clerk of the Committee: The motion is that the committee invite the Minister of Transport, Infrastructure and Communities to appear by Thursday, November 9, 2006, to discuss the main estimates for the fiscal year 2006-2007.

[*Translation*]

I may also repeat it in French, if you wish:

That the committee invite the Minister of Transport, Infrastructure and Communities to appear by Thursday, November 9, 2006 to discuss the Main Estimates for the fiscal year 2006-2007.

[*English*]

The Chair: Shall the amendment pass?

(Amendment agreed to)

The Chair: Shall the motion as amended carry?

(Motion as amended agreed to)

The Chair: We will now move to the second motion that we have in front of us. I believe everyone has a copy.

The motion has been presented by Mr. Julian and I open the floor for discussion.

Ms. Chow.

Ms. Olivia Chow: Mr. Chair, thank you very much for the opportunity to quickly discuss this. I won't take much time.

Mr. Tassé's report has been released. It is a good size. It is 110 pages. Judging from the media interest, a lot of people are quite interested in it. I believe the media briefing took an hour and a half, at least, so obviously people are interested in looking into it.

However, understanding your very important agenda in studying Bill C-11 and also the budget estimates and the supplementary estimates, yes, I totally agree. And there is the infrastructure discussion that I remember from last week.

If the committee is in favour of this recommendation, I have no problem having that discussion after you finish the clause-by-clause study of the bill. I understand that, because the bill has gone through various Parliaments and has ended up not getting through. I totally understand that we need to get Bill C-11 done, get the estimates done, get those things done. Even the infrastructure some people said was quite important, so I don't mind having all of that go ahead, and then hopefully we will still be here and we will look at the Tassé report.

I wonder whether that is appropriate for people.

• (1720)

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean: The government side thinks it's a great idea.

The Chair: Seeing no other comments, I would ask that the motion as presented be accepted.

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

The Chair: I don't want people running away for one minute. We're going to go in camera to review the schedule to make sure everybody is happy with it.

The committee has to have a motion to accept the recommendations of the subcommittee.

[*Proceedings continue in camera*]

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

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

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