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Chair

Mr. Merv Tweed

Standing Committee on Transport, Infrastructure and Communities

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● (1550)

[*English*]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Thank you, and good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 31.

Pursuant to the order of reference of Thursday, September 21, 2006, we are examining Bill C-11, An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts.

After a very successful last day, we're going back to the three clauses that have been stood. We are starting with clause 29 and we are dealing with amendment number BQ-4 on page 21 of your program.

I will advise Monsieur Laframboise that the chair has a concern with the motion, but I'm prepared to let you place it on the table, and then we'll proceed.

Monsieur Laframboise.

(On clause 29)

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): The amendment is on page 21. At the same time, I will be discussing amendment BQ-5 found on page 22. We are suggesting that we add the other nuisances to the word "noise" so that the Transportation Agency really has the authority to issue guidelines for all types of nuisances. We have not focused solely on the word "noise"; that is why the heading of the clause is "Noise, Vibrations and Fumes".

Amendment BQ-4, on page 21, amends clause 95.1, which would read as follows: "A railway company must minimize any nuisance, including those caused by the noise, vibrations and fumes..." In this manner, the agency would have the authority to discuss all types of nuisances. This is why we have added the words "including those caused by the noise, vibrations and fumes".

The difference between amendment BQ-4 and amendment BQ-5, which is found on page 22, is that BQ-5 does not include the word "including"; it simply states "caused by the noise, vibrations and fumes". We would like to be able to discuss all types of nuisances and we would like to see the agency be authorized to deal with complaints regarding the various nuisances, including those caused by noise, vibrations and fumes associated with railways.

Then, we would amend clauses (b), by replacing lines 7 and 8 and (c), lines 20 and 21: "to minimize any nuisance, including those caused by noise, vibrations or fumes". The purpose is to add, to the word "noise", the other nuisances, including those caused by noise, vibrations and fumes. The agency would therefore be authorized to discuss all kinds of complaints regarding nuisances to the community.

[*English*]

The Chair: Thank you, Monsieur Laframboise.

I am advised that the amendment creates a new section in the Canada Transportation Act concerning limitations imposed on operators of railway companies relating to unreasonable noise resulting from the construction or operation of the railway. The amendment proposes to also include limitations on operators with regard to vibration and fumes resulting from the construction or operation of a railway, and Bill C-11 does not address any issues relating to vibrations or fumes.

The *House of Commons Procedure and Practice* states on page 654:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

The advice I've received and the opinion of the chair is that the introduction of limitations relating to fumes associated with the construction or operation of a railway in this amendment is a new concept that is beyond the scope of Bill C-11 and is therefore inadmissible.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Mr. Chair, thank you for recognizing me.

I want to direct comments in particular to the Bloc in relation to their amendments. The department has provided us with a proposal, at our insistence, that would be a compromise in some degree and would maybe satisfy, although the Bloc proposal is inadmissible, and I suggest it would be basically on your ruling, Mr. Chair.

I think that very possibly some of the consolidation of amendments we have proposed and the compromise we have proposed may fit in with and be satisfactory to the Bloc's intention, if, subsequent to your next ruling on BQ-5, I were able to provide those to the committee. I think they would actually answer some of the questions and maybe move us along a little more quickly towards the goal of trying to finish this today, Mr. Chair.

The Chair: I can advise the committee that the ruling on BQ-4 would be the same for BQ-5, just for your information.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Before tabling our amendments, we checked with the legislative drafter to make sure that they were in order. He told us that they were in order. I am prepared to examine the government's motion, but we did verify whether or not these amendments were in order before tabling them. I do not want to challenge your decision. I will accept Mr. Jean's motion.

[*English*]

The Chair: Thank you. I appreciate your comments.

I'll ask Mr. Jean first to circulate the proposal, if he could. Before you comment, I'd like everyone to have it in front of them.

Mr. Jean.

Mr. Brian Jean: This is on a separate issue. Mr. Chair, I was thinking that of course everybody wants to get this done today, so we should move along in that order. Hopefully we can get something done based on this compromise.

I'm wondering if we could start the issue of noise provisions by asking the department to give us an outline. For today, I've asked them to prepare some sort of outline of the industry in general, and specifically on some of the amendments and comments.

● (1555)

The Chair: Would it relate directly to what you're circulating around the room?

Mr. Brian Jean: Indeed, it would.

The Chair: Is that okay with the committee?

Mr. Hubbard.

Hon. Charles Hubbard (Miramichi, Lib.): When the officials are here, it's very easy to say that this legislation doesn't pertain to noise and fumes, or fumes and vibration—I guess noise is a vibration, isn't it? It depends on how you hear.

In any case, maybe they could advise us on where people could look for legislative changes that would apply to fumes, which is quite a significant factor with diesel motors running continuously in some neighbourhoods.

If the chair would permit this, I would also like to know where we would have to go for that.

The Chair: Absolutely.

Then I would ask Ms. Borges to please start.

Ms. Helena Borges (Director General, Surface Transportation Policy, Department of Transport): Okay. Thank you very much.

I'll start by answering Mr. Hubbard's question. Along with a couple of other federal departments, Environment Canada in particular, the department regulates the emissions of locomotives. Currently we have a memorandum of understanding with the railway industry where the emissions from locomotives are regulated, based on the standards put forward in American legislation, because, as you know, most or all locomotives are constructed in the U.S. That is how those amendments would need to be made.

If I'm not mistaken, in the Clean Air Act, which was tabled a few weeks back, the MOU will continue until 2010, and then the emissions from locomotives will be regulated on a regulatory basis in Canada, similar to the U.S.

Hon. Charles Hubbard: Thank you.

The Chair: Mr. Jean.

Mr. Brian Jean: Mr. Chair, I think that even the proposed amendments we have allow some flexibility by the agency to address those through the legislation we're proposing. I think that's fair to say, is it not?

It gives them a wide ambit, and that's why we want to make sure the agency has the powers to deal with complaints, because we did hear from the witnesses. Although from a technical perspective we may not be able to get it in the act directly, I believe we found a way to get it there, so the agency can deal with vibrations and fumes.

Could you please comment on that, Ms. Borges?

Ms. Helena Borges: Let me give you a little bit of context in terms of how these provisions came along and what is their intent. The real objective we are trying to achieve here is a balance between the complaints and the concerns we have heard from communities and citizens, as well as the operational obligations of the railways.

As you know, in the parts of the act pertaining to railway transportation, section 3, there are numerous obligations with which the railways have to comply, and one of those obligations pertains to level of service.

Last week there was a motion tabled with this committee that touched upon those obligations with which the railways have to comply. In order for them to comply with those requirements of the act, they need flexibility in terms of their operations, because as you can appreciate, they are trying to meet the needs and demands of numerous shippers from across the country as well as the needs of ports, particularly ports on the west coast, which are getting increasing volumes of traffic, particularly from China and such. So it is really important that in looking at these provisions, we keep that context and that balance in play and in mind.

As well, we also have to remember that the railway lines in Canada are what I will call a shared facility or a shared asset. I think you received a letter from GO Transit's Gary McNeil following his appearance here, where he wrote to the committee some time ago expressing the concern following from the questions that were posed to him about what impact there would be on commuter rail services in particular if any restrictions are put on the operation of the railway.

In our three major cities, Montreal, Toronto, and Vancouver, those commuter services operate on, primarily, a CN line, but also a CP line, and if we start restricting the hours of operation for the freight services, those commuter services are also covered by these provisions. They are not exempt from them. The question then is, if the freight has to move within a certain hour or within certain parameters, when can the commuter rail operators operate their services?

We recognize that there is a huge issue with railway noise. How this came about, as all of you are aware, is that back in the year 2000, the Federal Court of Appeal issued a decision that basically told the agency they didn't have the explicit power in the Canada Transportation Act to deal with railway noise complaints. Since then, the government recognizes there's a vacuum. There's no other piece of legislation that can be used to deal with these complaints, and we take these complaints very seriously. That is why we are putting this provision into the bill, and it is why I believe even the witnesses you heard support the provision and want the provision to be passed as soon as possible.

The three provisions in clause 29 are going to correct this deficiency that hasn't existed since 2000. The objective that we are trying to achieve here is to be very clear in the powers that the agency has and the obligations of the railways, but also we want to make sure that the agency has the flexibility to deal with the issues and we don't want to constrain the agency by only allowing it to respond to certain things. So the provision does that.

The provision starts off in proposed section 95.1 listing what the obligations of the railway are. In the amendments that Mr. Jean passed around, we've agreed to add one more, based on the motions that were proposed. But this is basically what the agency is going to make sure of, that the railway respects these obligations that are in 95.1.

If a person has a complaint, they come to the agency and the agency will look at that complaint. The first thing the agency will do is look at whether the complainant has tried to resolve the noise issue with the railway in question. We like to encourage these voluntary approaches. You heard from the Railway Association of Canada. They told you they are working with the Federation of Canadian Municipalities, and they have in fact a very active initiative ongoing to solve noise disputes and other proximity issues. We want to encourage that. CP Rail does the same thing. They have a voluntary approach with the federation. We wanted to continue encouraging that.

However, we recognize that in a lot of cases we are not going to come to a solution. A solution isn't going to be possible. That is where the agency steps in. What the agency will do is, basically, if we leave the provision the way it is, it goes on site. It will go wherever the complaint is. If it is a railyard, for example, where the shunting is happening, or if there are idling locomotives there, or if it's on a track, the agency will go on site to look at how the operations are being done. It may need to look at things like noise impacts, decibel levels, or even if fumes or vibrations are being created. The agency will look at the whole situation and determine what action needs to be taken to resolve the noise complaint.

● (1600)

Those actions can be very rigorous, in that the agency is basically being given the power here to order the railway company—and I stress the word "order"—to take whatever action is necessary, either during operations or construction, to deal with that noise complaint. It could require the railway to move a certain activity out of one area of a yard to a different area of a yard; to not idle locomotives in a certain part; or to do shunting activities in a different part. These are the powers we are giving to the agency.

I can't stress enough that this is a huge hammer. There is no other mode that has this kind of hammer. This is the first time we're actually giving the agency the power to deal with a transportation company and be able to order it to do anything like this.

The other important thing to keep in mind is that the agency has the powers of a superior court. I know there were some concerns from the witnesses about what would happen if the railways didn't follow whatever the agency said. The agency is a court and has the powers of a court. It will require the railways to do that. The agency orders are fully enforceable, and we can't stress enough how important it is to give the agency flexibility, because by giving it flexibility, you are better able to address the very types of issues that you heard about from the witnesses.

Several of the members asked the witnesses if they saw one fix that we could impose. I don't think you got an answer on that. There are various situations, and whether it's on a line, in a yard, in an urban area, or in a more rural area, the agency will have the flexibility to deal with those issues. The powers we're giving it in this bill are very broad.

[*Translation*]

The Chair: Mr. Laframboise.

Mr. Mario Laframboise: I agree with you with respect to the noise, but as for the rest, the agency has powers. Clause 95.2(1)(a) states:

> (a) the elements that the agency will use to determine whether a railway company is complying with section 95.1;

However, clause 95.1 deals with noise. It will be a lost cause for any other type of nuisance, as was the case in the Oakville decision.

● (1605)

Ms. Helena Borges: Yes, but as I was saying to Mr. Hubbard, the Railway Safety Act prevails with respect to fumes released into the environment.

Recently, the department came to an agreement with the rail company. All locomotives are subject to the U.S. regulations because that is where they are built and manufactured. So this act does not grant this power.

With respect to vibrations, I should clarify that the vast majority of complaints received by the agency, and even by the department, pertain to noise. However, where there is noise, there are vibrations. I think that the two phenomena are closely linked. In my opinion, if we can resolve the noise problem, we will, to a large extent, be resolving the vibration problem.

[*English*]

The Chair: Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): How long do you see the process of drafting guidelines taking?

Ms. Helena Borges: We have been speaking with the agency, and when they appeared before the committee recently they had already started to look at the guidelines. What we have asked them to do—and they are participating because we're also participating—is, to the extent possible, try to look at what the Federation of Canadian Municipalities and the Railway Association have already done and build on that. But we also want them to consult more widely with other municipalities and organizations that may have roles to play. So it won't take them long. We expect it will definitely be done within the next year or couple of months.

There are various groups already working on this issue. We know it has been an issue for several years now, so lots of work has been happening.

The Chair: Mr. Jean.

Mr. Brian Jean: I want to tell Mr. Julian and other members of the committee that noise was a huge issue for me in particular and for other members of our caucus. We heard it a lot, not just from members here but from everybody. We've had three or four meetings with the department already on this particular section. We've changed it quite a few times, and we've talked about some compromises with Mr. Julian, the Bloc, and the Liberals.

Many of the Conservative members were concerned, until we started to talk about what they were actually planning to do. In the old days, before the 2000 judgment, when they got a noise complaint they would sometimes go into the yard and say they couldn't do shunting there any more, or they had to do shunting over in another part, or maybe they had to build a berm or weld those tracks because there was too much noise vibration.

The agency goes on site and makes determinations about particular things that can be done for different sites, because they're all dramatically different across Canada. So this is the first time we've had legislation on noise and given power to the agency. That's why there's flexibility in it. Unless there are any other comments—

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: The legislative drafter confirmed that this was not against the law and that it was in order. So I didn't look into the issue of noise. My motion reads "must minimize any nuisance". Yours talks about unreasonable noise. I already have a problem with the expression "unreasonable noise". Personally, I would have been more stringent. I have a legal problem here.

I was able to take further steps and I will be receiving confirmation regarding this action a little later, by e-mail. My problem is that I'm working on something else. In other words, I did not focus on the word "noise". You talk about "unreasonable noise", and I feel that this is not adequate. Witnesses suggested the expression "as little noise as possible". I would opt for the expression "minimize the noise". The expressions do have significance.

I am not comfortable. You did not change the expression "unreasonable noise". In other bills, we have said "as little noise as possible". Later on, I will try to table the e-mail which states that this was in compliance. You can do what you like with it. You could reject my motion. That is not a problem, Mr. Chairman. I have more of a legal issue. I am not at all pleased with the House of Commons' legislative drafter, I can tell you that. This is not going very well.

● (1610)

[*English*]

Mr. Brian Jean: Perhaps Mr. Langlois can respond.

The Chair: Mr. Langlois.

[*Translation*]

Mr. Alain Langlois (Legal Counsel, Legal Services, Department of Transport): The word "unreasonable" was chosen because it is currently used by the agency. With expressions such as "as little noise as possible" or "minimize", I can foresee a legal problem. For instance, the word "minimum" is very subjective. What do we mean by "minimize noise"? It must be understood that regardless of what the agency does, clause 95.1 establishes a standard that the railway company must take into account in its operations. The standard must be clear and comprehensible to the company. The word "minimum" would cause a legal problem because it has a broad, ambiguous meaning. It may be very difficult for a railway company to determine what is the minimum level of noise possible.

We are aware of the fact that the expression "as little noise as possible" was in the previous bill. The problem with this expression is that Canadian jurisprudence has but few decisions, if any at all, dealing with the meaning of the expression "as little as possible". This concept is not used frequently to establish a standard, whereas "unreasonable" is a concept found in nearly every existing federal law. Furthermore, it is a concept that the agency must apply on a daily basis. It is included primarily in air transportation provisions.

There is abundant jurisprudence dealing with what is meant by the word "unreasonable". When this bill comes into effect, it will be easy for the railway sector to determine whether or not it is respecting its obligations. There will be no ambiguity. At the same time, when a complaint is filed, the agency will not have any difficulty determining whether or not something is unreasonable. That is why the word "unreasonable" was used.

[*English*]

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: Thank you, Mr. Chairman. According to tradition, you of course have the right to inform the committee of your opinion, namely whether something is in order or not; however, it is in fact up to the committee to make the decision. Mr. Laframboise will therefore decide whether or not he wishes to appeal the decision, but we can at least say that there are two different interpretations. There is some ambiguity regarding this matter. I think that the committee should take that into account.

I agree with Mr. Laframboise. Although there is some improvement and certain aspects that I'm pleased to see in the wording used in Mr. Jean's amendments, I feel that they are not as effective as the wording use in the Bloc's amendment. I think that is important.

We heard from several witnesses who said very clearly that we had to deal with the issue of noise and every aspect that had an impact on the people living beside these railway centres. So I think that if Mr. Laframboise wants to appeal, we should consider everything, including the Bloc's amendment.

[*English*]

The Chair: Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Clearly, the thing that concerned me when we had the telephone witnesses in particular.... We had some witnesses from the Quebec area, as I recall, and then we had those who came in by telephone from British Columbia—Langley, New Westminster, Richmond. As I recall their statements, I think the witnesses indicated that their problem in the past had been that the railways had not been cooperative in terms of addressing noise issues, particularly the shunting and switching in the yards.

I understand the problem. I think it was pointed out that in one case in New Westminster, British Columbia, apartment buildings had been built within 100 yards of the railway lines. I see here in amendment NDP-13 a reference to 300 metres, which is about 1,000 feet.

The concern I have is that as in North Vancouver, noise problems have been substantial and they have continued. They're serious problems for a residential area. Whether it's high density or even residential...and I can refer to the Norgate neighbourhood in North Vancouver, where both as mayor and as MP I have had calls in the past from residents concerned about the shunting.

The intensity of the noise seemed to change, number one, with the change of ownership of the railway to some degree. That was where BC Rail switched over. Part of the noise came from the requirement at that time for whistling at crossings. When it was a provincially regulated railway, municipal councils were able to pass resolutions instructing the railway not to whistle, if the municipality chose to make that instruction, which they did through West Vancouver; they did in North Vancouver.

When it became a federally regulated railroad, the municipal bylaws no longer had any effect. The municipal motions no longer had any effect. And not only did the whistling start again, but the shunting complaints went up as well.

So I understand the importance, the obligation, to provide service for the railways. We have a letter from SkyTrain talking about urban rail transit, and another proposal that's later on, and it talks about the conflicts with its operational practicalities.

I just wonder whether or not the term “unreasonable”.... I'm happy to see proposed paragraph 95.1(d), the reference in here to the potential impact on persons residing in properties adjacent to the railway—which is new, I presume. So it does acknowledge that.

We talked before about health. Some of the presentations we had from witnesses talked about whether we could use a World Health Organization or a European standard for noise. I don't know if the department has done any research on that, but it seems to me that we need to put an emphasis on.... The goal should be to create the least noise possible while still operating a railway, rather than leaving the railways with the ability to say they have to run a railway; therefore, they don't need to seriously look at the noise question.

I think whether it's more modern technology, new couplers, different kinds of wheels, or track, or lubrication, or even policies as to how they do things within the yards, whether it's welding the rails, as you said in one example, or others, the goal has to be to reduce noise to the lowest possible level, recognizing that they have to run a railway.

I don't know if that's implicit in this, and that's my concern.

● (1615)

Ms. Helena Borges: You have raised numerous issues, and I'll try to address them.

I think Monsieur Langlois' response to Monsieur Laframboise about the word “unreasonable” is true. It is true that in a previous version of the bill we had the minimal noise possible. When the drafters went back through the bill, as they normally do when they have the time.... Most of the bills we have use the word “unreasonable”. If you want more on jurisprudence, he can give you more.

The word “unreasonable” is the word that is traditionally used. That onus is on the agency. The agency will have to determine whether the activity and the noise is unreasonable. The railway is told not to make unreasonable noise. It is the agency that's going to determine that. They have the ability to go on the site, check what's happening, and order the solutions to the problem. The agency will be the interpreter of that. They will have the flexibility to deal with those issues.

You raised the issue of train whistles. I think you heard from some of the witnesses that whistling is in fact a federal requirement under the Railway Safety Act. Again, it is a safety rule.

There are already measures in place, where a municipality can work with the railway to eliminate whistling at crossings. There is a process, and I'll outline it quickly for you. Basically, the municipality contacts the railway to look at what the crossing issues are. The two parties—the municipality and the railway—conduct a safety assessment. If both parties agree that whistling can be minimized or eliminated, they send the report to our rail safety inspectors at Transport Canada.

Our rail safety inspectors look at what is being proposed. Often, technologies are put in at the crossing. You have systems, such as flashing lights, bells, arms, and all those kinds of things. Normally the federal government helps to pay for those. We have a railway crossing program, and we pay for up to 80% of the cost of those improvements.

Those things are already there. My safety colleagues are working, now, to look at a new way of whistling. Right now it's based on distance. So rather than basing it on distance, they are looking at basing it on time. The U.S. has already gone in that direction. They are currently looking at the new rule. That should help eliminate how many times the train has to whistle—depending on how far back it is. Hopefully that will alleviate some of the concerns.

I think you also heard, by phone, from Mayor Fassbender in Langley. Again, his issue is whistling. As you know, I deal with Langley closely; I am working very closely with them. The issue there is that the train track goes right through the middle of the town. There are very few grade separations in that town. They're building one now.

We are currently finishing a study on the rail corridor from Deltaport to Abbotsford, to priorize the crossings in terms of the volumes of traffic, and looking at crossings that need to be grade separated because of the traffic volumes and ones that may be closed in an effort to deal with the whistling issue. It's more a whistling issue there than in fact a safety issue.

We're hopeful that early in the new year we'll be able to announce a series of those projects—working with the municipalities, the province, TransLink, and the railways—and that this will be a mutual effort that everybody agrees to.

I can tell you it's going to be very expensive. Grade separations are very expensive. But to us, it's an improvement in terms of reducing the noise from whistling, improving safety for both car and train traffic, and improving the efficiency of movements in an area that is fairly congested. There are seven municipalities that are going to benefit from this.

There are a whole variety of measures we are undertaking that are not just happening there. We are starting similar efforts in the Toronto region, in Montreal, and even in places such as Winnipeg. You'll see more and more grade separation activity starting to happen. We recognize there is a need to make those improvements.

● (1620)

The Chair: Mr. Blaney.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you, Mr. Chairman.

I am pleased to say something as an observer. I simply wanted to tell the committee members that I share the same concerns with respect to the bill and I have understood, further to Mr. Langlois' intervention, that the wording "unreasonable noise"...

Are you a lawyer, Mr. Langlois?

Mr. Alain Langlois: Yes.

Mr. Steven Blaney: You are clearly telling me that the words "unreasonable noise" provide you with more flexibility than any other expression such as "as little noise as possible", and that there is no jurisprudence. You are clear on that matter.

Mr. Alain Langlois: This is terminology that has been interpreted thousands of times by the courts. It is readily understandable to everyone.

The day that this bill comes into effect, the railway will have an obligation to meet the standard. So it's easy for the railway, given the wide range of existing jurisprudence, to know what constitutes an "unreasonable noise". It will also be easy for the agency, should there ever be a complaint, to determine whether or not the railway met its obligation, because the jurisprudence establishes what is meant by unreasonable noise.

As for the other expression, it's not that it would be impossible for the agency to decide on whether or not a complaint was warranted if we use the words "as little noise as possible", it's just that there would be a little bit of uncertainty for a period of perhaps one, two or three years, namely, the time it will take for the agency to establish jurisprudence on the significance of the expression "as little noise as possible".

So that would create certainty which did not exist in the previous bill.

Mr. Steven Blaney: Essentially, our objective to give the bill more teeth will be respected if we refer to "unreasonable noise", because there will be less uncertainty. Is that what you are telling me?

Mr. Alain Langlois: There is less uncertainty. I will try to ensure that I am not interpreting what that means for the agency, but the word "unreasonable", according to the way it has been interpreted by the courts and if we were to put ourselves in the shoes of any reasonably informed individual... Is the railway company making as little noise as possible or is it making noise that is unreasonable, more noise than it should be making?

As Mr. Bell said, does the concept of unreasonable noise include implicitly the fact that the railway company must make as little noise as possible? Implicitly, yes. If the railway company does not make as little noise as possible, the noise becomes unreasonable. Since the expression "unreasonable" has been interpreted many times, it is easy to understand the consequential obligation.

● (1625)

[*English*]

The Chair: Mr. Bell, did you want to—?

Mr. Don Bell: I have one final comment for Ms. Borges in particular. The other hat I wear is as critic for the gateway, and part of the Pacific gateway initiative involves, hopefully, increasing the volume through our ports on the west coast, and that implicitly means increasing both truck and rail traffic.

Currently, we expect to see perhaps a 50% increase in container traffic. We're looking at going from 9% to 14% or 17% of west coast trade, so we can see maybe a 50% increase in our container traffic. Containers move on both trains and trucks.

Part of the gateway initiative that we had started as a Liberal government, and which is being carried on to some degree through the Conservative government's gateway corridor initiative, was to have rail grade separations, particularly in the Fraser Valley. Certainly there should be money available in that program. You mentioned they're expensive. There is a benefit not only of reduced noise but increased safety, and also a reduced number of conflicts.

We saw, for example, during the bus strike in the greater Vancouver area a year or two ago the impact of the congestion on the road on the movement of goods and services. Everybody was taking their car to work, and vehicular trucks that could make maybe five deliveries in a day—40-foot semis going to grocery stores and things like that—were limited to one or two deliveries a day. So there was a cost, an impact on the economy. It had an impact on the movement of goods and services.

I recently reviewed the gateway file again and am on top of it, and it's important to know that there is money in that program. It was targeted, and we should make sure it's being accessed. There could be a benefit with regard to noise and inconvenience as well.

Ms. Helena Borges: In fact, the study I refer to is the study that was announced as part of the Pacific gateway initiative. You will probably have noticed that in the announcement by the current government—the previous government had set $30 million aside for grade separations—the amount has been increased to $50 million. That money will be leveraged from other parties because the federal government cannot pay 100% of these costs. I think it would be at least reasonable for us to assume that that will get tripled, if not quadrupled. If we have all the parties at the table working together, and if everybody can match the federal government's share, it should provide quite a lot of money for numerous grade separations in that corridor.

We agree with you fully: grade separations are becoming probably the most useful piece of infrastructure, particularly in urban areas, to avoid conflicts and improve efficiencies, and to support the growth envisaged under the Pacific gateway initiative.

The Chair: Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): I wanted to go back to what Mr. Langlois said about the term "minimize" which, according to him, would not be the one usually used in bills. That may be true, but it is the expression that we find in the current Transportation Act. In referring to railway companies, section 95(2) of the Transportation Act reads as follows:

> (2) The railway company shall do as little damage as possible in the exercise of its powers.

That is already part of the current legislation, and we have just amended or lowered a requirement that is already contained in the act.

Mr. Alain Langlois: It must be pointed out that section 95, in its current form, does not refer to noise. Noise was completely excluded from this section. This is what the 2000 decision was all about, when the agency lost jurisdiction in the area of noise. The agency used this provision to assume its responsibility with respect to noise, and the Court affirmed that this position had nothing whatsoever to do with noise. It deals with other damages that can occur.

In addition, I can tell you that we have absolutely no jurisprudence under this section.

Mr. Robert Carrier: If there is no jurisprudence and since this section was valid for any other nuisance with the exception of noise, it may also be valid for nuisances caused by noise.

Mr. Alain Langlois: This has much more to do about physical damage caused by the construction or operation of a railway and this is how the Court has interpreted section 95. This is not really about damage that may perhaps be less quantifiable from a physical standpoint. That's the way I would qualify it.

● (1630)

[*English*]

The Chair: Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): On a point of order, Mr. Chair, are we debating Monsieur Laframboise's motion, which was ruled inadmissible, or have we now moved on to the conglomeration of amendments?

The Chair: We are debating the proposal put forward on the government sheet.

Mr. David McGuinty: Okay.

Just so I understand, in so doing, when this amendment is eventually put to a vote, would this effectively nullify the amendments following, which are combined in this government—

The Chair: I was going to clarify that once we got through the discussion.

Mr. David McGuinty: Okay. Thank you.

The Chair: I can advise you that the vote on the government amendment would basically deal with the following: CPC-2, BQ-6, L-3.3, NDP-14, BQ-7, NDP-15, and L-4. To my understanding, it encompasses the language being presented in those amendments.

Mr. David McGuinty: It's an attempt to encompass that language, right?

The Chair: Yes.

Mr. David McGuinty: Then can I infer, Mr. Chair, that a number of the subsequent amendments that would be dealt with here chronologically are going to be ruled inadmissible?

The Chair: For this particular clause, the two amendments that we would be able to continue debate would be NDP-12 and NDP-13. It would require some positioning, but those amendments would be applicable and debatable.

Mr. David McGuinty: And the others would be—?

The Chair: The other amendments wouldn't be accepted.

Mr. David McGuinty: If this passes.

The Chair: If this passes, true.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, on a point of order. I would like to discuss whether or not this motion is in order. I would like to table the e-mail that the legislative drafter, Mr. Francis DesCôteaux, sent to the Bloc Québécois research analysts. It reads as follows, and I quote:

> Michael Lukyniuk and Susan Baldwin, legislative clerks, confirm that the motions would be in order. More specifically, Motion 2459208...

That corresponds to amendment BQ-6.

> ...it would be in order since the bill includes an "environmental" dimension by adding the obligation to respect the environment under section 5 of the Canada Transportation Act (see clause 2 of the bill, line 24, page 1 and line 11, page 2).

I would like to submit a copy of this e-mail to the clerk. I also have copies for everybody, because I feel that my rights are currently being infringed upon.

[*English*]

The Chair: I appreciate the information provided by Monsieur Laframboise. It is in French only, and I would need unanimous consent to table it for all the members, but in review, I would have to stand by my original decision that it would be inadmissible.

[*Translation*]

Mr. Mario Laframboise: According to Standing Orders, I have the right to challenge your decision and appeal to the committee.

● (1635)

[*English*]

The Chair: What I would like to suggest, the advice that I've been given, is that this document, in my mind, would be third party, in the sense that there is one person making a comment on behalf of two other people. It is not from the actual people who were credited with the comments.

I understand that it was dealt with or that this decision was made on November 8. Collectively, the clerk and the counsel are suggesting to me that it is inadmissible. If anyone would like to see it, unfortunately, I don't have it in the English form, but it is actually a statement by someone referring to the comments of two other people. These are not actually the comments of the original people.

[*Translation*]

Mr. Mario Laframboise: I understand, Mr. Chairman. I said this to you at the outset: we submitted our motion to the legislative drafter who then went to see the legislative clerks in order to ascertain whether or not it was in order. That is the mandate that we gave to the legislative drafter. He responded to us by e-mail. Some of my colleagues do not want to entertain this e-mail, but I have brought copies. Mr. McGuinty would like a copy; you can provide him with one.

[*English*]

The Chair: Again, I would have to suggest to the committee that the drafter of the legislation is making a comment on behalf of the legal counsel, and I would suggest that that is out of order, and I would still rule that the amendments would be inadmissible.

Hon. Charles Hubbard: Mr. Chair, with this, it doesn't reflect the best way for us to accept amendments. Our clerk probably received this weeks ago, and only today have we told the proposer that it's not in order. It's rather late to receive that information. I know that committees often work this way, but it's really not fair to legislators to find out a few minutes before they make a decision that an amendment that's been sitting here on our desks for weeks suddenly is out of order.

I don't want to criticize the clerk, but was there any correspondence to indicate when this was received that it was not admissible?

The Chair: It is the chair that has the right to make that ruling, and I think the tradition has been, at least at this committee and at every one I've sat on, that it is made at the time of presentation. But again, I would like to advise the committee that this comment is being made by the drafter, not by the legal counsel being quoted in this article. It's like me saying that you agree with a statement, not with the person himself.

Hon. Charles Hubbard: Mr. Chair, though, if I may interrupt again, the more significant point is that you have taken full responsibility, but you must have had this, and probably as chair you should have indicated to the honourable members that there was a problem with it. Otherwise, we get to these meetings and anything could be thrown in or thrown out at the last minute. It doesn't reflect a good way to do legislation.

The intent, I'm sure, of the honourable member was good, but for some reason, today he's informed. Maybe he was informed yesterday.

Mr. Laframboise, were there previous indications that—?

The Chair: I think the member, being a former committee chair, would recognize that this is the process that has been followed, and if a member submitting an amendment has a concern, he is to check that out. It is his responsibility to check that out with legal counsel.

I cannot comment on an amendment until it is before the committee. Therefore, I have to have the presentation of the amendment, which I allowed Mr. Laframboise to do, and then I made a comment on it that it was out of order.

Mr. McGuinty.

Mr. David McGuinty: Thanks, Mr. Chair.

I'm going to take a leap of faith and assume that the same rationale that was used by you, Mr. Chair, to rule Monsieur Laframboise's amendment out of order may be applied to subsequent amendments in this package of amendments dealing with noise.

Picking up on Mr. Hubbard's comments, it may be that I have the rules wrong, but I assume there's a prima facie understanding that when this goes through the drafting process of the legislative clerk of the House of Commons, who has drafted, after all, all these amendments, these amendments would at least pass the first hoop of legal opinion and legal opprobrium.

Secondly, I don't know what it is that Mr. Laframboise would have to have done to satisfy the committee. I read this in French, and I understand that the person writing this memo is Mr. Francis DesCôteaux, who is an employee of the House of Commons, not an employee of any particular member of Parliament—

● (1640)

The Chair: He's a drafter.

Mr. David McGuinty: —who is a drafter, who was relaying the agreement of two legal counsel that this motion would be acceptable, that this amendment would be receivable—I'm sorry, “admissible” in English.

So when I first heard you speak to this, I thought maybe the third party was a staffer, for example, of one of the members of Parliament.

The Chair: But I would advise you, Mr. McGuinty, that Mr. DesCôteaux is not a part of the legal counsel. He is merely a drafter of legislation. Legal counsel—pardon me, a legislative clerk—will then review that legislation, or that amendment, and make that decision.

Mr. David McGuinty: Okay.

The Chair: The only comment I would make is the fact that it would appear that Mr. DesCôteaux is making a comment on behalf of two of the legislative counsel, and I would think that wouldn't be acceptable.

Mr. David McGuinty: If I could just translate it loosely for anybody who might want it, it says that the two individuals, both legislative counsel—

The Chair: But they're not saying it; someone else is saying it on their behalf.

Mr. David McGuinty: May I finish?

The Chair: Yes.

Mr. David McGuinty: Thanks—confirm that the amendments would be admissible. So it's important for us as a committee to understand this I think, because we're now moving into another territory, if I understand Mr. Laframboise, who has invoked his right to appeal your decision.

I just want to make sure that we understood what this might have said in French and in English. I think that's what it says. It says that a third party—you're right, Mr. Chair, thank you—an employee of the House of Commons, has relayed the views apparently of two legal counsel saying that these amendments would be admissible.

But I want to pick up on something Mr. Hubbard said, because this would be the second or third time that my amendments have been proposed here, I arrive at committee, and they are rejected out of hand as inadmissible, and I'm not sure that is the right of the chair.

Maybe we ought to send a message back up the flagpole to the House of Commons procedural committee that we ought to work in a different way going forward, as a recommendation of this committee. But I want to get this clear, because before we even get into this question of further debate, or continue with this debate, I really need to know in terms of procedure where we might be going in terms of where we are now.

If we are now debating the admissibility or the appealability of your ruling, maybe you could help us understand where we're at in terms of order.

The Chair: We are currently debating the proposal put forward by the government, and as stated, the amendments that are being put forward would deal with the amendments on the righthand side, would encompass it.

The two that stand outside of these amendments would be amendments NDP-12 and NDP-13.

I did ask the committee if they were prepared to look at this document and discuss it. There was no disagreement, and that is what we are currently debating.

Mr. Jean.

Mr. Brian Jean: Actually, I'm not sure if it's even—

[*Translation*]

Mr. Mario Laframboise: On a point of order. I am appealing your decision. Whether or not you decide to reject my motion is not serious. Am I entitled to appeal the decision? I think so. It's up to the clerk to tell us. I had the opportunity of meeting with government officials today, and I was not told that my amendments were going to be set aside and that they were not in order.

I am disappointed. I had looked into this matter, Mr. Chairman. I had asked that this amendment be verified to ascertain whether or not it was in order. I had asked the legislative director to do this. I have no difficulty accepting the fact that my motion may be defeated. I want to know whether or not I am entitled to appeal your decision. I would like the clerk to tell me if I have the right to do this. There will be no hard feelings. If the motion is defeated, it isn't any more serious than that. If I can't, I can't.

● (1645)

[*English*]

The Chair: Again, I'm going to ask the clerk, and I would suggest that you did not ask legal counsel directly for this response; you asked a drafter for his opinion, and that's what we have in front of us. We do not have the words of two legal counsel members. We have the word of the drafter of the amendment, who suggests that he believes it is in order. Those are not their words, but his.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, I asked the drafter to ensure that the amendments were in order. That is the mandate that I gave to the drafter. You are entitled to tell me that I did not do this. However, in my opinion, my amendment is in order. You have an opinion to the contrary. If I can appeal your decision, I will do so. I am appealing your decision, and my appeal may be dismissed. That does not bother me.

[*English*]

The Chair: I do have a problem with asking a drafter a legal opinion, and that's what we have in front of us. I'll check with the clerk if it's doable.

I'm told in order for you to appeal my ruling, you would need unanimous consent of the committee, simply because we have moved on to this document, this amendment, presented by the government.

Mr. Ed Fast (Abbotsford, CPC): I have a point of order, Mr. Chair.

The Chair: Go ahead, Mr. Fast.

Mr. Ed Fast: I'd like to make one point.

At the point in time that Mr. Laframboise raised the issue, I was already a little concerned, because in our haste to move on with the government's amendment, Mr. Laframboise really didn't have any opportunity to request an appeal.

The Chair: Then we can do it through unanimous consent, if it's the will of the committee.

Mr. Ed Fast: Mr. Chair, in the interest of fairness, I'm not sure we followed proper protocol. It's not your fault; we were very anxious to move on to the government amendment.

Mr. Laframboise did have the right to request an appeal of your decision. I think it's fair for him to continue to have that right, and I'm not sure it should require unanimity at this table. It would be unfair to the process. Again, it's no reflection on you, Mr. Chair; it's no reflection on anyone at this committee. Let's be fair about this and deal with the merits of it.

My second point is that if we're going to deal with it, I want to make sure that the document that was submitted to you here in French is read verbatim into the record so that I can hear the translation of our translators and have it on the record.

The Chair: Go ahead, Mr. Watson.

Mr. Jeff Watson (Essex, CPC): I'd like to speak to the point of order, Mr. Chair.

I want to back up Mr. Fast's point here. Unless my ears really failed me, I do recall that before we moved on to the government's agenda, Mr. Laframboise declared that he would like to appeal. I heard that very distinctly and very clearly, before we moved on to another agenda item.

I think that in all fairness we should be on that discussion, and I don't think it requires unanimous consent to go back to it. He did raise his objection at the time; I did clearly hear that.

The Chair: Go ahead, Mr. Jean.

Mr. Brian Jean: I understand the committee's concern.

I'm wondering if Mr. Laframboise has had an opportunity to look at the proposal that has been offered to him. My understanding is—quite frankly, and laying all the cards on the table—that fumes are not in order, simply because they're not dealt with in the context of the bill itself. I think that's out of order.

I'm wondering if you've had an opportunity to discuss my proposal in relation to dealing with vibrations and if you would be amenable to that proposal. Given the comments by the department on the balance of the—

● (1650)

[*Translation*]

Mr. Mario Laframboise: Once again, I just want to keep track of things. We will look into it, but I would just like to have a decision about the appeal. As for the rest, we are open to comments. We were convinced that our amendment was in order. As for the rest, we will look into it.

[*English*]

Mr. Brian Jean: Mr. Chair, just—

The Chair: Before I respond to anybody else, I'll ask the legislative clerk to make a comment, please.

Mr. Mike MacPherson (Procedural Clerk): Basically, a letter is sent out as soon as the order of reference is received by a committee to study a bill or any legislation. A letter is sent out to all members of the committee identifying who the legislative counsel is, who will be drafting amendments, and who the legislative clerk is who will review amendments for admissibility. The letter actually states that if you have any concerns or questions concerning admissibility, you are to contact the legislative clerk; for drafting purposes, you are to contact the legislative counsel.

I thought I'd put that out there to clear it up.

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Chair, I think you've been fair throughout this process.

We have a situation here that's a little delicate. Because we can also appeal your decision on unanimous consent, I think the will in the four corners of the room is that we would move to a consideration of the appeal of Mr. Laframboise.

I would urge you to move to that. Otherwise, we'll be caught up in a lot of procedural wrangling. Generally speaking, I think we want to consider this amendment.

I'm not reproaching your work or the work of the legislative clerk. I think you worked in good faith. But there's obviously an inconsistency here, and I think the committee as a whole politically will have to make the decision on how to treat that inconsistency.

The Chair: Mr. Bell.

Mr. Don Bell: To that issue and to the advice we had from the clerk, the question I had written down is this: would the words of the legal counsel have made a difference? In other words, if we're drafting, which legal counsel, as opposed to a drafter...?

Your ruling related to the fact that a drafter was giving third-hand and second-hand comments or hearsay comments, if you want to call it that, from someone else. We didn't have the benefit of hearing them directly.

As a member of this committee, if I wanted to make an amendment, does it have to be done, as you're telling me, by naming a particular person who is only approved for this committee?

Secondly, do I understand correctly that the issue is on fumes? Is Mr. Laframboise criticizing the ruling because the inclusion of the word “fumes” is not acceptable?

The Chair: I can only comment on the fact that right now we are reviewing a document that is third party. The comments by Mr. DesCôteaux are not the comments of the two people in the document.

I would have to say that if we're going to submit a document with someone else's comments, we should contact those people to ask if they stand by the comments that are attributed to them. It's what we're trying to decide on here.

Mr. Don Bell: My question to you, Mr. Chair, was exactly that.

If a letter had come from those two people, would it have made a difference? If their opinions had been directly expressed in written form, would it have made a difference?

The Chair: Legal counsel reviews these and collectively makes a decision, and that is the decision I put forward today.

Mr. Ed Fast: Mr. Chair, could we deal with the point of order? We're debating the merits of Mr. Laframboise's motion right now.

The Chair: Mr. Jean.

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

I only want to talk about what Canadians want. Canadians see the filibustering that's going on right now.

We have 35 to 40 minutes to get this bill passed and out of the House. There are three clauses left to do. We have some compromises in front of us, some good language, and some other compromises that have come forward. Can we talk about the issue at hand, which is a bill that the rail industry and Canadians want to have passed through this committee and through this House?

We have 35 minutes to do it before we have to wait two months to get to the next stage. I would like to see it happen, but the reality is that I don't think there's going to be unanimous consent to open it up again.

We can do it procedurally, but we really have the guts of the situation right here in front of us, Mr. Chair. We've tried to come up with compromises.

Mr. McGuinty, I would suggest that none of your Liberal amendments are out of order. They'd come in later on and could maybe be encompassed here. We would certainly be open to any amendments you'd propose in relation to the consolidation we've done with the Bloc, the NDP, and you.

But let's deal with the nuts and bolts. It's what we have in front of us. Let's get on with the show. Let's get this done for Canada.

● (1655)

The Chair: I would have to seek unanimous consent to revert back to the original amendments presented by the Bloc.

Mr. Julian.

Mr. Peter Julian: Mr. Chair, on a point of order, I would appeal your decision on requiring unanimous consent. I've certainly not seen a requirement for unanimous consent on any of the committees.

Procedurally, we were effectively on Mr. Laframboise's amendment.

I'll appeal the decision, which does not require unanimous consent. I appeal the decision of the chair.

The Chair: Shall the chairperson's decision be sustained?

We will revert back to Mr. Laframboise's amendments.

Mr. Brian Jean: Mr. Chair, with respect, I want to put objections on the record. I do not believe that procedurally you can rule out of order a procedural order by the chair. I do not believe that is possible.

The Chair: The committee can appeal the decision of the chair. We'll revert back to amendment BQ-4.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I am submitting the amendment to you. We discussed this. I insist that this must deal with the noise, vibrations and emanations from the railways that are being built or run. This is what our amendment to section 95.1 means to do.

[*English*]

The Chair: Actually, we'll revert back to Mr. Laframboise to challenge. We're actually going back to the challenge to the chair on my ruling of the inadmissibility of your amendment.

Mr. Ed Fast: Mr. Chair, could we have that read into the record now, in French, by someone who speaks French here—hopefully, the clerk—so that I can hear it?

Mr. Jeff Watson: Reading it in is also for posterity, for the public.

The Chair: It is against my better judgment, but I will allow it to be read into the record. I believe there are going to be two people named in this document who are unaware of their names being in this document and referred to, and I want the record to show that.

Again, I would look to the committee for direction. In my mind, this would be like my making a comment on behalf of everybody in this committee and attributing it to them and putting it on the public record.

As a chairperson, I totally disagree with that. I think if we want to hear this comment, we should ask these people to attend this committee to make these comments. This is a third-hand document.

Mr. Jean.

Mr. Brian Jean: Mr. Chair, with respect as well—I would do the same if this document were in English and not in French—I take exception to the committee's even entertaining it without its being in both official languages, and especially as third-party information, which is not admissible in any law for anything. Why we as a committee would look at this at the ninth hour....

We made a commitment at the last meeting and the meetings before, and privately when I spoke to many of you, to get this bill done today. Yet here we are, not even moved anywhere in an hour and a half. Now we're finding a filibuster from every side.

● (1700)

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, I gave you that document. Earlier, you read your legislative drafter's decision. You read it, you did not give me a copy of it in both languages, and I did not ask you for one. I read the document out to you. I brought copies of it so that people can read it. I can read out to you the document that I received from the legislative drafter who drafted my amendment and who had asked for the legislative clerk's opinion. Let me read it out to you for clarification.

I do not agree with the position that you propose. I expressly asked the drafter who drafted my amendment to verify if it had been tabled, because that would change my working schedule. I want you to understand that. If I am not working on this amendment, I am tabling something else regarding the terms "minimum", "reasonable", etc.

Someone has misled me. Was it the legislative drafter who drafted my amendment? I asked for an opinion, because I wanted my amendment to be in order; otherwise, I would never have tabled it.

Now you are telling me that it is out of order. You did not give me three days notice, you are telling me that today. Since November, I was assured that this amendment was in order. This is why, last time, I questioned Mr. McGuinty regarding an amendment. I know that I had asked for opinions to find out whether my amendments were in order. Now you are telling me that they are not in order. This is why I have doubts, not about your decision, but about the clerk's advice. This is not your decision. This is advice from your clerk. Nevertheless, the legislative drafter who drafted my amendment checked with the clerk.

It does not matter what happens to my amendment afterward. It can be defeated, anything can happen to it. However, as an elected representative, I feel that I have been cheated by the government apparatus. I do not feel cheated by you or by the committee and I do not want to create obstructions. I simply said that I wanted to adopt the bill today. That is my concern.

I have a list of amendments to propose, and proposals will no doubt be made if we add the term "vibrations". If your legislative drafter decides that it is out of order, then I have made no progress, Mr. Jean. If we can all agree about adding the term "vibrations" and if the clerk says that it is not in order, it comes down to challenging the clerk's decision.

I would like us to go ahead and add a few things. However, I am not sure whether your clerk gave you good advice. I have a problem with it. You should also have a problem with the fact that your clerk has given such advice.

I will probably agree with Mr. Jean about some amendments, but what will happen if they are not in order, Mr. Jean?

[*English*]

Mr. Brian Jean: I agree with you. Everybody agrees with you here, but we still have this in front of us. Let's get it done.

The Chair: Excuse me, Monsieur Laframboise. My only comment is that I believe you took your advice from the wrong person. You took your advice from a drafter, not from legal counsel. The document is stating that the drafter is making these comments, not legal counsel. I can't help that. If you want legal advice, you have to talk to legal counsel, not to the drafter of the amendment.

That's what we do as a committee. We take it before legal counsel and they give us an opinion. Regardless of what the drafter says, it is legal counsel and the clerk who make those decisions. You're taking the advice of a drafter, not the advice of legal counsel. I think the document makes that very clear. I regret that you believe the drafter had the authority and the right to make a legal comment, but I suggest to you that he did not.

Mr. McGuinty.

Mr. David McGuinty: Thanks, Mr. Chair. I just want to add a few things.

I just want to make it very clear from the Liberal side in this committee that two or three times now the word “filibuster” has been used by the parliamentary secretary. There's no filibuster here. We've all been working very well on this for months, so it's unreasonable to make that suggestion. I am sure Mr. Laframboise is capable of saying the same thing—he just said it.

Secondly, Mr. Chair, I would draw a distinction between your comment earlier about you speaking on behalf of this committee and an officer and employee of the House of Commons relaying the legal opinion from two colleagues. We will agree to disagree on this, I'm sure. I don't think it's third party or hearsay.

I'm not sure if we're going to make progress on this, but we may want to set this aside until we have an opportunity to hear from the two named parties in this note.

The Chair: I'm not prepared to do that.

Mr. David McGuinty: It might facilitate our actually hearing.... I am concerned with the way this has transpired. I think Mr. Laframboise, from what I can gather here in the correspondence, has taken all reasonable steps to try to secure agreement that these would be accepted at committee, and clearly they're not.

I'm not sure, as a member of Parliament, what test he's expected to meet. We got the clarification from the legislative clerk earlier about the role of a drafter and the role of legislative counsel, but this is a grey area where I don't think it is as black and white as it's being presented.

I am going to suggest we consider setting it aside, not in the interests of delaying this but to make sure this is properly treated.

I don't see, Mr. Jean, the concerns raised by Mr. Laframboise in his amendment reflected in the government's omnibus amendments at all. I see the same test being put forward—not causing unreasonable noise—and I would remind all of us that we had at least eight witnesses who came here and gave us written briefs and oral presentations saying that one of the biggest problems with this bill was the unreasonable noise test.

I am in your hands procedurally, Mr. Chair, and I sympathize with you. My support is with you. I'm not sure where we are now, but I think we're still on the question of debating Mr. Laframboise's...the appealability of your decision.

I am in your hands procedurally as to where we go here from now. How do we actually move forward and deal with this question of appealing your ruling on the admissibility or inadmissibility of this amendment?

● (1705)

The Chair: Mr. Jean.

Mr. Brian Jean: I am wondering if I could ask the committee's indulgence for two minutes. I won't speak, but could we take a two-minute break? Is that at all a possibility?

[*Translation*]

Mr. Steven Blaney: Two minutes would not make that much of a difference.

[*English*]

Mr. Brian Jean: I know, I'm filibustering for two whole minutes. Can we take a two-minute break?

The Chair: We'll suspend for two minutes.

● _____ (Pause) _____

●

● (1715)

The Chair: When the committee suspended, Mr. Laframboise was suggesting that he was going to challenge the ruling of the chair, and I will go to Mr. Jean on a point of order.

Mr. Brian Jean: Mr. Chair, I think we have reached a reasonable compromise with some of the other members, and I'm wondering if instead of having Mr. Laframboise move that motion, I could read into the record what I believe to be an agreement among at least some of the members, which would be satisfactory, on clause 95.1.

If everyone wants to look at the government's proposed consolidation of amendments, "When constructing or operating a railway, a railway company will cause as little noise or vibrations as possible, taking into account", and then without going on, Mr. Chair, the balance of (a), (b), (c), and (d) would be the same.

So it would read:

> 95.1 When constructing or operating a railway, a railway company will cause as little noise or vibration as possible, taking into account

In fact I would change that to read "and/or vibrations" instead of just "or vibrations".

Having talked to the drafters, Mr. Clerk, I would substitute "and" for the word "or".

So it would read:

> When constructing or operating a railway, a railway company will cause as little noise and vibration as possible, taking into account

And then (a) through (d) would remain consistent.

● (1720)

Mr. Ed Fast: Why not "and/or"?

Mr. Brian Jean: I was told by the drafters that "and/or" is not necessary.

Mr. Ed Fast: You don't use that in legal drafting.

Mr. Don Bell: But if you use "and", are you not requiring both then?

Mr. Brian Jean: That would be my argument. I would prefer leaving in "and/or".

Mr. Don Bell: It's one or the other or both.

Mr. Alain Langlois: It's one or the other. Using "and" implies that you have to comply with both.

Mr. Don Bell: So we don't want both.

Mr. Brian Jean: The Senate, as the sober second thought, if such is possible, might come back with a change on that as drafters, but I would propose "and/or". I think it is clear. I would prefer "and/or". Sorry.

The Chair: What we have right now is a point of order. It is not a proposal or an amendment at this point in time. I would have to go to Mr. Laframboise. He still has the option of placing his motion on the floor.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I will let Mr. Carrier speak first.

Mr. Robert Carrier: This is about the English word "will", that was chosen rather than the word "must". In French, this would mean "as little noise as possible", I suppose. But it would be better to use the word "must", which would mean that there must be as little noise as possible. I think that the word "must" is more appropriate than the word "will". 'Will" suggests something whereas the term "must" makes it mandatory.

Mr. Brian Jean: Very well.

[*English*]

An hon. member: I would move an amendment to that.

The Chair: Before we go to that, we have to ask Mr. Laframboise to make his motion to challenge the ruling of the chair or not, or to withdraw it.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, I will gladly withdraw my amendment, if Mr. Jean tables his current proposition.

[*English*]

The Chair: Mr. McGuinty

Mr. David McGuinty: I would like to add to the proposal put by Mr. Jean, if I could, because I think we could combine a few things that this consolidation of amendments purports to do anyway.

The Chair: I think before I get you to add your comments, I need to have the actual amendment put forward.

Mr. David McGuinty: Which amendment is that?

The Chair: It's the one that Mr. Jean has helped Mr. Laframboise present to the committee. Basically we're saying now that BQ-4 and BQ-5 are off the table with this amendment coming forward. Is that understood?

Mr. Brian Jean: I will read in the amendment, Mr. Chair:

> 95.1 When constructing or operating a railway, a railway company must cause as little noise and/or vibration as possible, taking into account
>
> (a) its obligations under sections 113 and 114, if applicable;
>
> (b) its operational requirements;
>
> (c) the area where the construction or operation takes place; and
>
> (d) the potential impact on persons residing in properties adjacent to the railway.

● (1725)

The Chair: I'm looking for direction from the committee.

As it was presented in one document, French and English, would you be prepared to table it as one amendment?

[*Translation*]

Mr. Brian Jean: Absolutely.

[*English*]

The Chair: Is that okay with the committee?

Some hon. members: Agreed.

The Chair: It would still open up some discussion, as Mr. McGuinty has asked, with regard to both his amendments and other amendments.

Mr. Hubbard.

Hon. Charles Hubbard: Thanks, Mr. Chair.

Just to clarify, at first we ruled out that vibrations and fumes were beyond what we could do. I believe that's what the ruling was. Now we're saying that vibrations can be included, subject to the Senate or somebody else making changes, but fumes will not be part of the amendment we have before the committee.

Is that correct, that we're ready to deal with vibrations in addition to noise, but we're not willing to deal with fumes?

Mr. Brian Jean: That's right.

The Chair: Vibrations weren't ruled inadmissible, just fumes.

Hon. Charles Hubbard: But to my understanding, the amendment that the government presented for proposed section 95.1 did not include anything but noise, which we are now considering.

Mr. Brian Jean: That's right.

Hon. Charles Hubbard: In other words, the government, or somebody, decided that vibrations should not be included. But I thought the advice we got from the—

The Chair: Mr. Jean.

Mr. Brian Jean: What happened, Mr. Hubbard, is that the Bloc put in an amendment that included vibrations and noise. When you disqualify an amendment, you disqualify the entire thing.

Vibrations are included within the context of the bill; fumes are not. Therefore, they don't say, well, you can't have fumes so you can't have vibrations. What the government is saying is that we are putting forward vibrations because it's within the context of the bill.

But whether we did it or not—

Hon. Charles Hubbard: I'm sorry, but I thought the advice we got from the department was that vibrations should not be in the amendment.

No? Only the government thought it should be left out. Okay.

Ms. Helena Borges: Vibrations and noise to us are hand in hand. They're related to the activity. Fumes and emissions are covered by other pieces of law. That's why we believe it shouldn't be part of this bill.

The Chair: Mr. McGuinty.

Mr. David McGuinty: So we're debating—?

The Chair: The entire document. I have suggested which ones may or may not be included, if the motion passes as presented, but I think we'll leave it open for debate until we get to that point.

Mr. David McGuinty: Okay.

The Chair: We've got all night.

Mr. David McGuinty: I just didn't think a member could propose an amendment to their own amendment. But that's another issue. We can move on.

I assume it's a friendly thing we're moving forward. Have I got that right?

Mr. Brian Jean: Actually, it wasn't an amendment until I read it into the record the last time, but whatever you want.

The Chair: We had debate with regard to this piece of paper. Then we reverted back and Mr. Laframboise agreed to withdraw his challenge. I then asked Mr. Jean to actually move this as an amendment.

Mr. David McGuinty: I understand.

The Chair: We're debating that. If you look at the right-hand side, it does suggest which amendments are impacted by this document and would fall by the wayside, one way or the other, with input from the committee.

Mr. David McGuinty: Perfect timing.

I'd like to pick up on L-3.3, then, Mr. Chair, if I could. I think it would be interesting if we could marry the new wording put forward by Mr. Jean, where he says, “When constructing or operating a railway, a railway company must cause as little noise and/or vibration as possible”.

I'm proposing that we consider adding to that sentence the following:

> When constructing or operating a railway, a railway company must cause as little noise and/or vibration as possible for human health, as determined by reference to current scientific research and relevant national and international standards.

Then you could simply add, “It must further take into account”, and you would follow with paragraphs (a), (b), (c), and (d).

I'm proposing that, Mr. Chair, because I am concerned about the breadth of what constitutes an operational requirement under paragraph 95.1(b). It isn't defined. Does that constitute economic operational requirements? Does it constitute engineering operational requirements? Does it constitute passenger or cargo ridership operational requirements? Does it constitute gross income operational requirements? What does this mean?

I wanted to pick up on two things. One was the six or eight witnesses who came to committee and presented briefs saying this was a problematic area for us, which is why we're dealing with it.

Secondly, I want to refer back to the agreement between the Federation of Canadian Municipalities and the Railway Association of Canada. An MOU, Mr. Chair, was struck between those parties. It was long in its working out and was detailed in its scope. For those of you who may remember having read it, it does set out very specific decibel level tests on the question of noise in and around railyards. It goes as far as saying I think that if you're in your living room at nighttime and your windows are closed, there cannot be precisely more than 37 decibels of noise.

I think it would help Canadian citizens to have a higher level of comfort, in that the tests that will be used to identify what is “as little noise and/or vibration as possible” will be informed with actual scientific criteria, as well as being balanced against

> (a) its obligations under sections 113 and 114, if applicable;
>
> (b) its operational requirements;
>
> (c) the area where the construction or operation takes place; and
>
> (d) the potential impact on persons residing in properties adjacent to the railway.

I don't know if anybody remembers when I put this question to the Railway Association of Canada, but the answer was that it wasn't required and that the committee and legislators should not try to go further into the details in terms of how we would measure noise or how we would test for noise.

I think we could actually marry L-3.3 with the proposal put by Mr. Jean, which embraces much of what Mr. Laframboise has suggested in terms of embracing the question of vibration. That's my suggestion, Mr. Chair.

● (1730)

The Chair: It's now 5:30. At the last meeting, we said we would have some discussion at 5:30 to see where we were on the bill. I'm prepared to entertain that discussion right now.

Mr. Jean.

Mr. Brian Jean: Mr. Chair, I would move a motion to the extent that we sit until this bill is done tonight. I understand that there are some other commitments, but given what we have in front of us right now, Mr. Chair, I would suggest that this would take no more than 20 to 30 minutes to finish up.

The Chair: Mr. Julian.

Mr. Peter Julian: I would oppose that motion, Mr. Chair. We said very specifically last week that we would keep Wednesday evening, if possible, for consideration of the bill.

You're absolutely right to remind us that at 5:30 today we were to look at that issue of whether or not to sit tomorrow. I understand that our Liberal colleagues have a Christmas party tonight, and I think it is unfair to impose—

Some hon. members: It's tomorrow.

Mr. Don Bell: There are two dinners tonight and there's a party tomorrow night. It's Christmas.

Mr. Peter Julian: Given all of that, it is unreasonable to extend the hours automatically at this point, although I would suggest that we could perhaps find a compromise at another point this week.

The Chair: Are there any other comments? There's a motion on the floor. I do remember the debate the other night, and I know Wednesday night was not agreeable.

The motion on the floor is to continue with this meeting until we come to some conclusion. All those in favour of that motion—?

Mr. Don Bell: Is it possible to amend that? Can I try an amendment imposing a maximum of 30 minutes?

● (1735)

Mr. Brian Jean: What about an hour?

The Chair: An hour?

I've put the question, and I'll ask the committee to vote on it.

(Motion agreed to)

The Chair: We're still discussing Mr. McGuinty's amendment L-3.3, inclusive of the amendment put forward by Mr. Jean. Are there any other comments?

Mr. Peter Julian: Sorry, Mr. Chair, but are we now considering Mr. McGuinty's subamendment?

Mr. Brian Jean: It has to be a friendly amendment. That's my understanding.

Mr. Peter Julian: No, it does not.

The Chair: That's what we're dealing with. It's L-3.3.

Mr. Peter Julian: I support Mr. McGuinty's subamendment, which helps to further extend how our legislation should take into consideration railway noise, and I will give a heads up to the committee that once we've dealt with this subamendment and we have dealt with the subamendment that Mr. Jean did on top of his own amendment, I will be offering a subamendment as well that will incorporate NDP-13. That will allow us to consider all of the aspects of clause 29 before we move on after that.

The Chair: I can advise Mr. Julian that NDP-13 can be dealt with independently. It does not have to be presented as a subamendment, just for the record.

If you choose to do that, though—

Mr. Peter Julian: I'll still do it this way.

The Chair: Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: I understand Mr. McGuinty's amendment, but I oppose it. I had the opportunity to question representatives from the department. I have a municipal background, and thus I know that decibel metres are in current use. Technology is used to enforce standards in noise levels. Mr. Langlois made a fine presentation. Now I am convinced that the agency will have to find ways to regulate the industry and that this will unavoidably involve new technology.

From what I gathered from Mr. Langlois' statements, we must avoid establishing another minimum-maximum standard. This would be equivalent, as it were, to a licence to create pollution or make noise. I do not think that this is good. I would rather let the agency have the freedom to use new technology as need be. Thus, if there is an issue, if the study reveals that the noise level is too high, a limit on the noise level could be imposed.

Mr. Langlois, I would like you to carry on with your explanation.

Mr. Alain Langlois: Paragraph (d) of the amendment moved by the government was basically aimed at covering all the human health aspects. This paragraph, which states that the railroad must take into account "the potential impact on persons residing in properties adjacent to the railway", obliges the railway to take these factors into account. If there is a complaint, the agency, based on these factors, could use other external factors, like the standards that Mr. McGuinty's request alludes to, to determine whether the railway is meeting its obligations pursuant to this paragraph. The agency could always resort to such external factors to determine whether the railway has met its obligations pursuant to section 95.1.

Mr. Mario Laframboise: I think that your concern has something to do with the fact that US legislation includes decibels. What was the impact of including this?

Mr. Alain Langlois: I am afraid that by including very specific standards in paragraph 95.1, they cannot be applied everywhere at all times, and that the railway would have to comply with them no matter what the circumstances are. We must show some flexibility when we set standards on a national scale. If we set specific standards and the railways comply with them, the agency will no longer be able to intervene.

If the agency had more leeway, it could, under certain circumstances, determine that even though the standards have been complied with, that it is not enough. It should have the power to impose higher standards on railways. This would give the agency the opportunity to take specific circumstances into account in each case.

● (1740)

Mr. Mario Laframboise: All right. Thank you.

[*English*]

The Chair: Since there are no comments....

Oh, I'm sorry, Mr. McGuinty.

Mr. David McGuinty: Can I ask you specifically.... You're a lawyer, are you?

Mr. Alain Langlois: Yes.

Mr. David McGuinty: Can you tell me what "operational requirements" might embrace, when the agency is actually looking at this question of tests of noise? How broadly can "operational requirements" be interpreted?

Mr. Alain Langlois: The notion of operational requirement refers to their obligation. They have an obligation of service to all of their shippers, so they have to take that into account. They're a railway, so obviously they have to operate their railway—they have to operate their yards; they have to operate their trains. You have to take into account the fact that they have an obligation to operate, have an obligation to carry freight—

Mr. David McGuinty: What does "operational requirements" mean? You've just told me now, for example—something I didn't think of earlier—that operational requirements actually embrace the economic success, potentially, of shippers.

Mr. Alain Langlois: It's all a balancing exercise. The railways have obligations under the act. If you go to sections 113 to 116, they have an obligation; they cannot refuse traffic. If a shipper goes to them and says, "You carry my traffic", they can't tell them, "No, I'm not going to carry it." There's a common carrier obligation; they have to pick up the traffic.

You have to balance their obligation to carry traffic and operate their trains with the other element of the equation, which is, in doing so, to make as little noise as possible. It's all going to be a balancing exercise.

The danger I was explaining is that if you set a norm that is fixed and is applicable to all railway operations in the country, you run the risk.... First of all, you're going to have to set the bar a bit higher, because the norms will have to be susceptible of being applied throughout the country. If you look at the United States—and Ms. Borges can elaborate on that—their standards are set out in regulation and are very high in terms of decibels. If you do that, you run the risk that the railways will only meet these requirements.

What this act does here is allow flexibility for the agency. Even though a railway may meet any standards that are prescribed internationally or nationally, the agency may say, "This is not enough. You have to meet further standards. You have to go further than those standards require."

Mr. David McGuinty: Let me ask you, then, if I might, how is the wording I proposed here going to set a minimum floor that will lead to the American experience? The wording has actually been designed to embrace referencing current scientific research and relevant national and international standards. It doesn't actually say that it shall be 37 decibels. It says that in weighing this question of noise, the agency, with lots of flexibility, shall be cognizant of international and national scientific research standards.

How is that in any way fettering the freedom of the agency to come up with a balanced approach?

Mr. Alain Langlois: I'm going to let Ms. Borges answer that, but the first concern I have is that the way I understand your amendment, you want to include this wording in the opening paragraph of proposed section 95.1. If you do so, you set out the norm. That would be the norm, and everything that follows in proposed paragraphs 91.5(a), (b), (c), and (d) will become accessory.

The railway will have to meet these standards. Even though they have operational requirements and levels of service obligations, the norm would be that they would have to meet these standards. So you don't create that balance that is sought in section 95.1.

That's why we put in the proposed paragraph (d). I strongly feel that proposed paragraph 91.5(d), which is put forward here, includes somehow the standard that you want to include in your motion.

Mr. David McGuinty: My second question, if I might, Mr. Chair, is if it is so difficult for the agency potentially to interpret, for example, a decibel test, why after two years have the Railway Association of Canada and the Federation of Canadian Municipalities both signed off on precisely those norms?

Ms. Helena Borges: Can I answer that, Mr. McGuinty?

Your amendment is seeking to amend proposed section 95.1. Proposed section 95.1 is the obligation on the railway. The question you just asked pertains to proposed section 95.3. In proposed section 95.3, we specifically say that:

> the Agency may order the railway company to undertake any changes in its railway construction or operation that the Agency considers reasonable to prevent unreasonable noise

The things you're speaking about—the measures that the Railway Association of Canada and the FCM, the guidelines that the World Health Organization, and the regulations that the Americans have in place—all fit under that element. That's what you're asking the agency to take into account in deciding the action that needs to be taken. It's in that proposed section there.

What we're suggesting is, leave it broad for the agency; they're going to look at those things anyway. There isn't a consensus internationally; we can tell you that. Leave it to the agency to determine exactly what actions are needed.

You don't impose that on the railway; you impose it on the obligations of the agency to have the flexibility to determine what the best action is and what guidelines, what measures, what rules, what regulations they want to include as part of their solution.

I think we're just focusing on the wrong part of the bill. What you're suggesting, really, is covered by the obligations of the agency and what the agency will be looking at.

● (1745)

Mr. Ed Fast: Call the question.

Mr. David McGuinty: Mr. Chair, I don't think that falls under proposed subsection 95.3. I think what we heard from witnesses galore and I think what we heard from across the country is that even though the text, as presented, says that they must cause as little noise or vibration as possible, proposed paragraph (b) is the operative part of proposed subsection 95.1 that causes the most concern.

I still haven't had a satisfactory answer from either of you as officials. I know you're crystal ball gazing for the agency.

Ms. Helena Borges: No. I'll tell you what operations mean. You didn't ask me the question. I'm the railway expert.

Operational requirements does not refer to finances. Operational requirements means what a railway needs to do to conduct its operations.

A railway must hook cars onto a locomotive. That involves switching from one train to another. That causes shunting noises, which we heard a lot about. A railway must move those cars along the track. You heard that there are very long trains, often now two to three kilometres in length. That's part of railway operations.

A railway does what is called “humping” in the industry. That happens at a yard, and it's when the cars are sorted onto the actual trains. Those cars are taken down a hill and the cars are sorted onto the proper trains. That's rail operations.

Railway operations also means inspecting the train before the train leaves. Often before the train leaves or when the train consist is being made, the locomotive is operating and it's idling. So there's a potential idling noise, a potential vibration noise. But once that train is set up, the railways are obligated, by law, by federal railway safety law, to inspect that whole train before that train leaves the yard. That, too, is part of railway operations.

To categorize it very broadly, anything that involves the movement of a train from the point of origin, where it collects its goods, to the point of destination, where it delivers the goods, are all operational requirements. It has nothing to do with the financial bottom line. Yes, that's how they earn their income, but the financial requirements are separate. I think we saw when we were talking about the airlines, when we were talking about reporting, that the two are different. This is what a railway has to do to carry out its business. All those activities we heard about, yes, they're part of railway operations, and that is why that is in here. They must try to limit the noise or the unreasonable noise. I think we've agreed now to limit it to the minimum. But all those are operational requirements. They can't function without doing those activities.

Mr. David McGuinty: We heard from a witness who said, for example, that one of the ways you could actually significantly reduce noise is to bring in a new form of braking system, which is shrink-wrapped and on the shelf right now, and most locomotives and cars don't have that braking system.

If there were unnecessary noise, if a railway was not causing as little noise and vibration as possible and it could be minimized by changing the braking system, could a railway company successfully argue to the agency that operational requirements prevent it from changing its braking system?

Ms. Helena Borges: I would think they would have a very difficult time if the agency could demonstrate that in fact there are other technologies and that they could change the way they're operating. Let them make their case, but the agency has that same opportunity to argue that case, so it's something the agency will follow up on.

We heard about when shunting is happening. They can locate the shunting operations. That's been done in the past. Somebody mentioned earlier about the agency looking at the latest state-of-the-art technology, state-of-the-art-practices. That's exactly the flexibility we want to provide to the agency, because what is operational today will change in a year from now.

There are new standards for locomotives coming out. There are Green Goat locomotives, which are yard locomotives. They're much quieter. They're more fuel efficient. Maybe the agency can go in and say that rather than using your regular locomotive, use a Green Goat locomotive. It's more efficient, makes less noise, and does the same kind of activity.

Let's preserve that flexibility for the agency.

● (1750)

Mr. David McGuinty: This is my last question, Mr. Chair, finally.

I am going to ask you this again, just for the record. Having the agency determine what is as little noise and/or vibration as possible by using current scientific research and relevant national and international standards, it's your belief, would fetter the discretion of the agency to come up with the appropriate balance here.

Ms. Helena Borges: I would say it would, and I'm going to read something to you. You heard from witnesses, I believe, who said that the WHO has regulations. The WHO does not have regulations. I'm going to read from a document. I'll read exactly what it says:

> WHO has responded in two main ways: by developing and promoting the concept of noise management, and by drawing up community noise guidelines.

Not regulations, guidelines.

I think you heard from some of the witnesses that they would prefer the noise to be somewhere from 50 to 55 decibels. I'm going to quote you the number from the WHO guidelines in terms of the category called “industrial, commercial, and traffic areas”. The decibel levels that are allowed here are 70 decibels for up to 24 hours of operation a day.

That's the guideline the WHO has.

In terms of regulation, I'm going to quote you from the European Union regulations and compare them to the U.S. regulations. You should know that Canadian operational requirements are consistent with U.S. operational requirements, because our industry is integrated.

For a stationary noise, for an idling locomotive—stationary, not moving—for diesel locomotives, which are what we operate here in Canada and the U.S., and in Europe, by the way, the European noise threshold is 75 decibels. In the United States it's 70 decibels.

For a moving locomotive, a locomotive en route, and again, this is for a diesel locomotive, the level allowed in Europe is 85 decibels. In North America, it ranges between 88 and 93 decibels, depending on the age of the locomotive.

I just told you a minute ago that they're in the process of designing new locomotives. Those are going to be coming into effect in the next couple of years. So again, these regulations are going to be updated in North America to take that into account—state-of-the-art technology.

If we start putting decibel levels into the legislation, rather than saying let the agency determine—

Mr. David McGuinty: But nobody's proposing that.

Ms. Helena Borges: Right. But just in terms of limiting, I think it would be useful to let the agency look at what's in existence at that time for that activity, and use those elements.

Mr. David McGuinty: I know I promised it before, Mr. Chair, but I promise it's the last question.

Basically, the United States—

Mr. Ed Fast: You promised that a long time ago. Now you're filibustering.

Mr. David McGuinty: The United States and the European Union both have decibel tests. Is that right?

Ms. Helena Borges: They have it for locomotives only. It doesn't talk about railway operations.

Mr. David McGuinty: And we would have none under this bill?

Ms. Helena Borges: Our locomotives follow the U.S. requirements because they're made in the U.S., yes.

Mr. David McGuinty: But we have none in terms of the bill, in terms of the legislation?

Ms. Helena Borges: No, and our suggestion is that you don't need them because they already meet the U.S. requirements.

Mr. David McGuinty: Thank you, Mr. Chair.

The Chair: Mr. Bell.

Mr. Don Bell: Thank you.

Do I understand that we're dealing with proposed sections 95.1, 95.2, and 95.3 simultaneously?

● (1755)

The Chair: We're dealing with the entire document in front of you, including proposed section—

Mr. Don Bell: Okay. Then I don't know the appropriate way to deal with it, but for consistency with Mr. Jean's amendment, which is on proposed section 95.1—and I won't reread it, but the part about "must cause as little noise and/or vibration"—in proposed paragraph 95.2(b) it should say "the collaborative resolution of noise and/or vibration complaints".

In proposed subsection 95.3(1), the last three sentences should say, "any changes in its railway construction or operation that the Agency considers reasonable to"—and at this point it should say—"cause as little noise and/or vibration as possible, taking into account the factors referred to in that section". That flows through all three.

I don't know if that needs to be a subsequent amendment or an amendment to the amendment, however you wish to deal with that, but it is the continuity through the three portions.

Otherwise what you've done is you've gone back to unreasonable noise and not talked about vibration in proposed sections 95.2 and/or 95.3.

The Chair: It would have to be presented as a subamendment. I think what we'll do is deal with Mr. McGuinty's amendment L-3.3 first.

Mr. Don Bell: Okay.

The Chair: Mr. Carrier.

[*Translation*]

Mr. Robert Carrier: I was just about to speak about amendment 3.3. I understand Mr. McGuinty's concerns about standards, but we must remember that section 95.1 of the current act is aimed at reducing the noise level to a minimum. Thus, as we set standards, we authorize companies to reach the maximum permissible levels by those standards. This takes away any flexibility for studying specific cases in order to determine a minimum level of noise. In fact, Mr. McGuinty's amendment contradicts what was just said, namely that a company must make as little noise as possible. This is why we should oppose this amendment.

[*English*]

The Chair: Go ahead, Mr. Julian.

Mr. Peter Julian: I wanted to come back to Ms. Borges' comment. She started off by saying, "If we start putting decibel levels into the legislation", and then Mr. McGuinty said something, and you went on to something else. What was going to be the end of your sentence?

Ms. Helena Borges: If we start including decibel levels here, and they're high, and you get a complaint, and a citizen is complaining that the noise is too loud, then if the agency goes in and determines that in fact the decibel levels are within the regulation, the agency's hands are tied; they can't take any action that potentially would allow the agency to correct whatever is causing the problem that the complaint is about. Our concern is that you don't want to be setting thresholds, because you notice these decibel levels are fairly high; once you put something in writing—once you put a law in place—the agency has to live by that law, and that's how it became subject to challenge in 2000.

Give it the flexibility. It may be that an activity is within the decibel levels, but there's still action that the agency can prescribe to try to minimize the impact on the complainant.

That's it. If you start putting limits, the agency has to abide by those limits.

The Chair: Shall amendment L-3.3 carry? This is Mr. McGuinty's amendment.

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

The Chair: We're going to go to Mr. Julian to do amendment NDP-13. It'll be—

Mr. Peter Julian: Might I suggest, Mr. Chair, that we dispose of Mr. Jean's amendment to his own...the subamendment on his amendment—

The Chair: There will be a subamendment brought forward, I presume, by Mr. Bell.

Mr. Jean, when he presented it, made the changes and then read it into the record as the amendment, so what we're dealing with now is NDP-13. Just for the record, this amendment creates a new proposed section 95.11. It would fit in between proposed sections 95.1 and 95.2.

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

I will move that amendment. Given the hour, I won't take a lot of time to speak to it. However, it's very clear from all the testimony we've had over the course of this fall that those who live in urban areas are very concerned about the noise aspect. I think it's fair to say as well that they have tried to work with the railways, as we heard from Mr. Allen and Mr. Wright from New Westminster. They've tried to work with the railways and they've tried to have elements in place that would preclude the kinds of activities that create a lot of noise in urban areas, such as decoupling, coupling, and shunting.

The railways know. They've made commitments to try not to do shunting, coupling, and decoupling in the middle of the night, but they haven't kept to the commitments that they made, so the problem here is the choice we've faced all along: there's the issue of activity and there's the issue of decibel levels.

Ms. Borges has quite rightly pointed out that putting decibel levels into the legislation may not be appropriate. We know that whether or not the agency develops regulation around the types of equipment that can be used, inevitably we're talking about years before the railway companies would actually incorporate that new technology, so the only real opportunity for us to provide some immediate relief to those high-density urban residential areas located adjacent to shunting yards is to ensure that we have some restriction on activity.

That's what's proposed here—that we provide some restriction on activity in high-density urban environments. In the case of greater Vancouver, for example, it would mean there would be more activity in the Port Mann shunting yards and less activity in the Westminster Quay shunting yards.

Now, one might agree or disagree with the actual time allocated here, or agree or disagree with whether 300 metres or 100 metres is reasonable—those could be subject to amendment—but the principle is to restrict some activity. The railways already have implicitly acknowledged that it is a problem by making these agreements to not do these activities in the middle of the night. That's the objective of the amendment—to not have people wakened up at 11 p.m. or 3 a.m. or 4 a.m. by shunting or coupling or decoupling, or by the idling of diesel engines.

I'd like the committee to look at subamendments if they're concerned about the particular time period envisaged or what the distance should be. The principle of restricting those activities is sound, and it would help those high-density urban areas that are subject to a lot of noise right now at night. We can't expect that the agency, over the long term, would be able to deal with each of these individually; we know that inevitably it would be a restriction on activity. That's why I'm proposing this amendment.

● (1800)

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I understand what my colleague was driving at: we can add more measures without coming to a breaking point. However, we decided that there should be as little noise and vibrations as possible, and to add to subsection (d) "the potential impact on persons residing on properties adjacent to the railway". The agency will take all this into account.

Ms. Helena Borges: Yes.

Mr. Mario Laframboise: The industry is evolving. Have you calculated the impact that a limit on its working hours could have on the industry?

Ms. Helena Borges: Yes, the agency must assess this impact. Imposing limits on working hours would greatly slow down the economy. Mr. Bell explained how such measures could impact on the Asia-Pacific Corridor Initiative.

Currently, all companies are working 24 hours a day, and railways have to keep up with that. Otherwise, when will the freight get to its destination? We cannot impose such limitations. The agency can nevertheless look into the possibility of moving certain activities to places further away—

Mr. Mario Laframboise: Could the agency decide that certain time schedules must be respected in certain places? Would the agency have this power?

Ms. Helena Borges: Yes.

Mr. Mario Laframboise: If it had to look into a specific situation —

Ms. Helena Borges: I think that in Oakville, near Toronto, the agency asked Canadian National railways to change its schedules in order to lessen the impact on the public.

Mr. Mario Laframboise: All right.

Mr. Alain Langlois: As Ms. Borges said in her presentation, section 95.3 of this bill confers almost unprecedented power on the agency. There are no checks or balances to this power. The agency can make any decision at the discretion it deems reasonable in the circumstances. If the agency decides that in certain circumstances, working hours must be limited, it has the power to do so.

As was mentioned earlier, the agency could also require noise-abatement walls to be built if need be. According to the legislation, there are checks and balances for all the agency's powers, whereas section 95.3 of this bill has none at all. The agency is being given extraordinary powers.

[*English*]

The Chair: Mr. Bell.

Mr. Don Bell: Thank you.

I'm sympathetic to Mr. Julian's motion, but there are two things. First, I think we've all received a letter from SkyTrain and West Coast Express explaining the implications on their passenger rail service. I note specifically that proposed section 95.4 indicates that proposed sections 95.1 to 95.3 would apply, with any modifications that are necessary, to public passenger service providers.

With the changes that are being proposed to proposed section 95.1—and then I suggest proposed sections 95.2 and 95.3 for consistency—we are addressing noise and vibration now, so let's see if the system works the proper way, without going a step further. If we find from experience that it is not addressing it, then we can come back at some point and take a further look at this, either with the government's introduction or a private member's bill.

I think it would be very popular, if there is still the same level of complaints. But if the system allows for it now, we should pass what is being proposed and not pass what's being proposed in NDP-13 at this time.

● (1805)

The Chair: Shall NDP-13 carry?

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

The Chair: We're going to deal with the amendment put forward by Mr. Jean. Mr. Bell has a subamendment to make to it.

Mr. Don Bell: For proposed sections 95.2 and 95.3 to be consistent with the change in proposed section 95.1, after the first line in proposed paragraph 95.2(b), it would read, “complaints relating to the collaborative resolution of noise and/or vibration complaints”.

In proposed section 95.3, in the first paragraph, from the sixth line down you would delete “prevent unreasonable noise” and replace it with “cause as little noise and/or vibration as possible”.

So I've taken the same wording from proposed section 95.1 and pulled it down to proposed section 95.3.

I'm sorry, I'm not capable of translating that into French, but it's the same wording. That is my motion.

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

(Subamendment agreed to)

The Chair: Shall the amendment as amended carry?

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

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, I withdraw my appeal.

[*English*]

The Chair: Shall clause 29 as amended pass?

(Clause 29 as amended agreed to)

The Chair: Thank you, Monsieur Laframboise.

(On clause 39)

The Chair: We're dealing with amendment number BQ-8. It was moved by Mr. Laframboise.

Mr. Laframboise, I'll go back to you. It's on page 32 in your program and it's on clause 39.

Mr. Mario Laframboise: Has Mr. Jean proposed—?

Mr. Brian Jean: Thank you very much, Monsieur Laframboise.

The Chair: Mr. Jean, are you proposing a government amendment?

Mr. Brian Jean: I am. I had an opportunity to talk to Monsieur Laframboise. I have an amendment that I think would be satisfactory, certainly to the Bloc and to most members of the committee, based upon the comments made last time.

May I?

The Chair: Yes, please.

Mr. Brian Jean: I will wait until everybody has it, Mr. Chair.

The Chair: After Mr. Jean has presented this, I will ask Mr. Laframboise whether there's agreement to withdraw his amendment so that we can actually deal specifically with this.

Mr. Brian Jean: Mr. Chair, the main concern in relation to what was discussed last time was the definition of “urban transit authority”, that it encompass other groups that may provide commuter services, whether they be municipal, provincial, or otherwise.

What has been proposed by the government is to actually change clause 28, which deals with the definition—it seems this would be satisfactory—as well as clause 42, which is encompassing with it and indeed deals with other concerns. You'll see underlining of the text dealing with the change: “or within the territory served by any urban transit authority”. That change would go into proposed sections 146.4 and 146.2.

It seems to encompass more of a municipal hands-on approach to the idea of the “urban transit authority”, to include everybody.

● (1810)

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, what we wanted to do with amendment BQ-8, was to broaden the definition of a suburban transit company.

Now, the government wants us to come back to the definition in clause 28 of the bill that defines a suburban transit authority without limiting this solely to census metropolitan areas. The problem is that there are suburban transit systems that go beyond the administrative areas determined by the Canadian government. Thus, we want to allow these companies, that might cover territory bigger than a census metropolitan area, to do this. This would also allow regional companies, which do not operate in urban regions, to use public transit and benefit from this legislation.

I think that the government's position is the same as ours. We concur with the propositions that were tabled. As you see, if we add to clause 28 the following words: "in an urban region or on territory served by a suburban transit authority", it could apply to other companies that have services elsewhere than in census metropolitan areas.

Mr. Robert Carrier: Therefore, we will support this. We support it.

[*English*]

The Chair: In order to deal with this particular clause, I would assume Mr. Laframboise has withdrawn amendment BQ-8.

[*Translation*]

Mr. Mario Laframboise: I withdraw my amendment.

[*English*]

The Chair: We will vote on clause 39 without amendment.

(Clause 39 agreed to)

The Chair: With the permission of the committee, we have to go back to clause 28 to reinstate the definition.

Mr. Bell.

Mr. Don Bell: I have a question to Mr. Laframboise's question about expanding the definition. Are you happy with the definition under clause 28?

As I understand it, it doesn't refer to what we now have, which is “an entity owned or controlled by the federal government or a provincial, municipal or district government”. It isn't only an urban area. It's called an “urban transit authority”, but it means “an entity owned”. It could go beyond a high-density urban area, as I understand it.

[*Translation*]

Mr. Mario Laframboise: That is right, except for the fact that the amendment proposed by the government wants to take the words "in an urban region" out of the definition in clause 28. The new definition of the term "suburban transit authority" will be:

> An entity controlled by the federal or provincial government or a municipal authority or one belonging to it, and that provides public passenger transit.

If we do not keep the words "in an urban region", this could cover almost any public company at any level of government. This is why we concur with this definition.

[*English*]

Mr. Don Bell: It has addressed what you wanted.

Mr. Mario Laframboise: Yes.

Mr. Don Bell: Okay. That's fine.

The Chair: Would it be the will of the committee to reopen clause 28 and amend it with the definition that has been put forward by Mr. Jean?

Mr. Peter Julian: We'd agree to reopen it. We'd then vote on it.

The Chair: Yes, absolutely.

We're back on clause 28, and I would ask Mr. Jean to present his definition.

(On clause 28)

Mr. Brian Jean: It reads:

> “urban transit authority” means an entity owned or controlled by the federal government or a provincial, municipal or district government that provides commuter services.

The Chair: Are there any comments? All those in favour of the amendment?

(Amendment agreed to)

(Clause 28 as amended agreed to)

● (1815)

Mr. Brian Jean: Chair, should we immediately go to clause 42?

The Chair: That's exactly where we're going.

Mr. Brian Jean: Good.

(On clause 42)

The Chair: We have before us amendment BQ-9, on page 38 of your program. It was moved by Monsieur Laframboise.

Are there any comments?

Mr. Jean.

Mr. Brian Jean: Depending on the comments of Monsieur Laframboise, I'm indeed not certain what he wants.

Do you want to continue with the amendments we've made?

Mr. Mario Laframboise: Yes.

Mr. Brian Jean: It's satisfactory.

[*Translation*]

Mr. Mario Laframboise: What amendment are we talking about?

[*English*]

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Where are you now?

The Chair: We are on clause 42, amendment BQ-9.

Mr. Mario Laframboise: I think that it had something to do with the English term. You set this right in your new version.

The Chair: Yes.

[*English*]

Mr. Mario Laframboise: Okay.

[*Translation*]

Therefore, I will withdraw the amendment.

[*English*]

The Chair: Amendment BQ-9 has been withdrawn, which would move us to BQ-10, on page 39 of your program.

Monsieur Laframboise, you haven't moved it yet. You can choose to move it or withdraw it.

[*Translation*]

Mr. Mario Laframboise: In the circumstances, we will withdraw BQ-10 because it complies with clause 42 tabled by the government.

[*English*]

The Chair: So BQ-10 has been withdrawn. I will go to Mr. Jean for clause 42.

Mr. Brian Jean: Thank you, Mr. Chair. Would you like me to read clause 42 as amended into the record?

The Chair: I think that would be good.

Mr. Brian Jean: Clause 42, as provided by the government, states the following:

> 146.2(1) A railway company shall prepare and keep up to date a list of its siding and spurs that it plans to dismantle and that are located in metropolitan areas or within the territory served by any urban transit authority, except for sidings and spurs located on a railway right-of-way that will continue to be used for railway operations subsequent to their dismantlement.
>
> 146.4 Section 146.2 and 146.3 apply, with any modifications that are necessary, to railway rights-of-way, that are located in metropolitan areas or within the territory served by any urban transit authority and in respect of which the sidings and spurs have been dismantled, that a railway company plans to sell, lease or otherwise transfer.

(Amendment agreed to)

(Clause 42 as amended agreed to)

(On clause 49)

The Chair: Mr. Julian, would you like to speak to NDP-22 on page 45?

Mr. Peter Julian: It's my delight, Mr. Chair, to tell you that NDP-22 is actually consequential to NDP-13, which we did not pass, but since I have the microphone on I would like to say that generally I think we have reinforced the noise provisions of Bill C-11, and I'd particularly like, for the record, to thank all of the witnesses, particularly those from British Columbia and Quebec, who appeared before us, because I think through their comments they've help to push stronger language than we would have had.

I am not completely satisfied, but I think there have been some movements made. We'll see how well the agency does its job. I would like to thank the staff as well.

So NDP-22 is withdrawn.

(Clause 49 agreed to)

● (1820)

The Chair: Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: That is it, ladies and gentlemen. We do have an item at the end of our agenda. It was Mr. Laframboise's motion. Do you want to defer that to the first meeting in the new year?

[*Translation*]

Mr. Mario Laframboise: We will raise this issue at the next meeting.

[*English*]

The Chair: Okay. With that, I thank the committee for their work.

Mr. Jean.

Mr. Brian Jean: I just want to thank all the members on the government side for putting this through so well. It's going to be great for taxpayers, and it's a good move. Thank you.

The Chair: Thank you, and thanks to all who have helped us do this. Merry Christmas and a Happy New Year.

The meeting is adjourned.

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