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Chair

Mr. Merv Tweed

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Monday, February 19, 2007

• (1535)

[English]

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

Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 36. Pursuant to the order of reference of Tuesday, November 7, 2006, we have Bill C-6, an act to amend the Aeronautics Act and to make consequential amendments to other acts.

Joining us today, from the Transportation Safety Board of Canada, is Nick Stoss; from the Transportation Appeal Tribunal of Canada, Faye Smith; and from the Union of Canadian Transportation Employees, Michael Wing and Michael Teeter.

Welcome. I'm not sure if you have made any arrangements as to an order of presentation. Is there someone who would like to take it first?

Mr. Stoss, you have seven minutes.

Mr. Nick Stoss (Acting Director General, Investigation Operations, Transportation Safety Board of Canada): Thank you very much, Mr. Chairman.

Good afternoon. On behalf of the Transportation Safety Board of Canada, I'm pleased to have the opportunity to appear before the Standing Committee on Transportation, Infrastructure and Communities as it studies Bill C-6, the proposed legislation to amend the Aeronautics Act.

TSB last appeared before the committee on Tuesday, June 13, 2006. On that occasion, I accompanied our chair, Mrs. Wendy Tadros. In our presentation we highlighted that the Transportation Safety Board, under the CTAISB Act, is mandated to advance marine, pipeline, rail, and air transportation by conducting independent investigations into selected accidents and incidents in order to make the findings as to causes and contributing factors. Also, we identify safety deficiencies and make recommendations designed to eliminate or reduce any such deficiencies. Finally, we report publicly.

We also highlighted the importance of TSB's independence from all other government departments. This independence is key to establishing public trust and confidence in our work.

Because this session of the committee is dedicated to Bill C-6, I offer the following from the TSB's perspective.

Under the provisions of Bill C-6, Transport Canada is the government department directly affected by the changes to the Aeronautics Act. Although the TSB's work is not governed by the Aeronautics Act, during its investigations the TSB does evaluate the circumstances of every occurrence against the provisions of the Aeronautics Act. In this regard, it would make findings as to compliance with the act and related enabled regulations and other documentation where appropriate.

The specific Bill C-6 amendments that have a potential to influence how we achieve our mandate are in the following areas.

First, part II of the act now will provide the Department of National Defence with the legislation necessary to conduct investigations in an almost identical manner to the TSB. However, the provisions will only apply to those investigations being conducted by DND and to military accidents and incidents involving civilians.

Second, the provisions in part I will govern the establishment of a voluntary, non-punitive reporting system. This concept of a confidential, non-punitive system should have a positive influence on the reporting of unsafe situations in the aviation transportation sector. Although TSB has a confidential reporting system called SECURITAS, the TSB system does not incorporate a non-punitive element. The TSB currently participates in a working group with Transport Canada and industry to develop this new system.

Thirdly, the provisions of Bill C-6 related to the safety management systems are also of interest to the TSB, principally because this new approach has potential to significantly improve the early reporting and early resolution of potential and actual safety deficiencies.

Bill C-6 also provides the legislation related to the protection of information collected by the safety management systems. This factor has significant potential to ensure the quality of the information being reported and analyzed.

This concludes my opening remarks. I would be pleased to respond to your questions.

Thank you.

The Chair: Thank you, Mr. Stoss.

Ms. Smith.

Mrs. Faye Smith (Chairperson and Chief Executive Officer, Transportation Appeal Tribunal of Canada): Thank you, Mr. Chairman and honourable members.

It's my pleasure to be here today to answer your questions on the Transportation Appeal Tribunal of Canada. I'll give you what I hope is a brief overview of the tribunal.

[Translation]

The Transportation Appeal Tribunal of Canada is a quasi-judicial body established by reason of the Transportation Appeal Tribunal of Canada Act. It replaces the Civil Aviation Tribunal which was established under Part IV of the Aeronautics Act following upon the recommendations of Mr. Justice Charles Dubin in his report into aviation safety.

The Dubin Report, published in 1982, includes three parts. To paraphrase Mr. Justice Dubin, he wanted to elevate the importance of aviation enforcement. His focus became the objective of the program to provide the aviation community with the opportunity to have the enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.

● (1540)

[English]

By setting up a specialized quasi-judicial tribunal, the enforcement procedure was decriminalized, as is appropriate for contraventions relating to regulatory offences that are not totally criminal in nature. In its legislation, the Department of Transport reserves criminal court proceedings for the most serious offences. Hence, enforcement cases were removed from the criminal courts to the tribunal, and administrative monetary penalties ranged from \$5,000 for breach of a regulation by an individual to \$25,000 for a company. For the more serious enforcement cases, licence suspensions could be imposed by the minister.

I note that Bill C-6 increases the maximum monetary penalties assessed against an individual to \$50,000, and as against a company the proposed maximum is \$250,000.

As mentioned, in addition to enforcement cases, licensing decisions made by the Minister of Transport may also come before the tribunal. These matters relate to qualifications to hold a variety of documents of entitlement, including matters of competence for medical or other reasons.

[Translation]

Prior to the setting up of the Tribunal on June 1, 1986, matters of qualifications to hold a pilot license or an air operator certificate were heard under the Air Regulations of that time.

A request for a review of the decision to suspend such a document was not heard by an independent body. Rather, the review procedure was conducted by someone in the Department of Transport, usually one level up from the person who originally sent the Notice of Suspension. Although there were many safeguards and guidelines built in such a system, the man on the street does not perceive it as a very independent review since it is done by the same Department.

[English]

That was the aim of Mr. Justice Dubin when he said that an independent tribunal composed of impartial members with subject matter expertise should be hearing these matters related to suspension.

The cases referred to above may include imposition of monetary penalties, or suspension, cancellation or refusal to renew, or refusal to issue or amend documents of entitlement on medical or other grounds. The person or corporation affected is referred to as the document holder.

The review and appeal hearings are held expeditiously and informally in accordance with the rules of fairness and natural justice, which involve the right of the individual or company to have a hearing before an unbiased and impartial hearing officer. At the conclusion of a hearing, the tribunal may confirm the minister's decision, substitute its own decision, or refer the matter back to the minister for reconsideration.

[Translation]

The basic principles governing the Tribunal are those of independence and expertise. The sound and competent execution of the Tribunal's mandate determines its effectiveness in dealing with the Canadian transportation community.

● (1545)

[English]

The tribunal's chairperson is also its chief executive officer, and the tribunal is responsible for the direction and supervision of the work necessary to facilitate the functions of the tribunal.

The part-time members are drawn from across Canada and are appointed by order in council on the basis of their knowledge and expertise. The office of the tribunal is located in the national capital region.

In enforcement matters, the hearing will normally be located where the incident took place. In medical cases, the hearings will be at the location that is nearest to the residence of the document holder.

In addition to the full- and part-time members—there are two full-time members—we have eight employees. That's our entire organization. Over the past 20 years, we have worked on an average of 250 to 300 cases per year, and approximately 60 to 80 of those go to a hearing. Many of the cases, obviously, get settled along the way.

Over the years, the practices and procedures of the tribunal were flexible and straightforward, and the tribunal became an example of government's best practices. It worked well over time because the tribunal took pains to keep its process simple and accessible to applicants, thereby providing effective recourse rights regarding certain administrative decisions.

The informal procedure and simplified rules allow the document holder to represent himself or herself without counsel, but representation by counsel is certainly permitted. Each applicant, upon filing a request with the tribunal, receives a copy of the guide to hearings. There are no user fees at the tribunal. We've been fortunate that we've been able to do that so far.

A review of the tribunal's operations reveals two things. The tribunal appears to be successful in disposing of the matters that have come before it in an expeditious fashion. It has certainly been more successful than the previous system, from an aviation perspective. It also appears that the very existence of the tribunal as a forum for review of enforcement and licensing decisions has, in and of itself, created an environment for the resolution of matters between the Department of Transport and those that it regulates—that is to say, we get the parties talking. This, alone, resolves many matters. Those that remain go to a hearing.

I thank you, and I await your questions.

The Chair: Thank you very much.

Mr. Wing, please.

Mr. Michael Wing (National President, Union of Canadian Transportation Employees): Thank you, Mr. Chair and members of the committee, for the opportunity to participate in the deliberations on Bill C-6, amendments to the Aeronautics Act.

As we all know, this bill has been around for quite a while, and Transport Canada has in effect been acting as if the legislation were already in place. If you sense a degree of frustration in my voice, you're probably reading me correctly.

The Union of Canadian Transportation Employees represents the vast majority of inspectors who are responsible for ensuring that Canada's airlines and airports are safe and the rules are obeyed. UCTE members are fulfilling the obligations of the government as embodied in the responsibilities of the Minister of Transport, as clearly articulated in the Aeronautics Act. In section 4.2 of the act, the responsibilities of the minister are clearly laid out in more than a page of dense print. Section 4.2 begins as follows:

The Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics

There are about 12 specific functions identified following these general obligations, but the two I would like to emphasize are to “investigate, examine and report on the operation and development of commercial air services in, to or from Canada”; and “investigate matters concerning aviation safety”.

So the minister clearly has the responsibility for regulation, supervision, investigation, and reporting of all aviation matters in Canada. UCTE members perform these functions and are accountable to the minister and the government for the discharge of these responsibilities.

The question I would ask, and that you as legislators must carefully consider, is whether the responsibilities of the minister are discharged appropriately and in the public interest through the designation process, through the management system delegation process, and through the disclosure and confidentiality waivers that are the cornerstones of Bill C-6 that you are considering here today.

We certainly do not believe that ministerial responsibilities can be exercised through approval of these provisions in Bill C-6. We believe that by approving these amendments the Crown is exposing itself and the public to unsafe aviation and air transportation outcomes. We believe that the minister cannot effectively discharge

his or her obligations through the extent of delegation to the carrier community that is sanctioned in this bill.

All political parties in the House of Commons supported the Federal Accountability Act. We do not believe that the principles enunciated in the new Federal Accountability Act can be accommodated through the non-disclosure and Access to Information Act exemptions that are proposed to be provided to airlines and their associations through this bill.

How are the Federal Accountability Act principles protected and represented by a bill that permits airlines to keep a serious safety and security breach from being disclosed to the public? How can the public be assured that the minister is discharging his or her obligations when there is no accountability for that disclosure? Does this not fly in the face of the FAA and everything it stands for? Does this not fly in the face of the responsibilities of the minister and the government that are clearly articulated in the foundations of the Aeronautics Act itself?

It is a well-known fact that the whole plan being implemented through this legislation is really about saving the number of government inspectors and presumably saving money for Transport Canada in the process. It is also what we consider to be a substitute for a proper human resource and training plan for the aviation inspectorate, particularly in light of the demographics of the inspectorate community. Obviously, existing and future UCTE members are negatively affected by this approach, and our interests clearly conflict with those espoused in Bill C-6.

● (1550)

At the same time, we are not convinced that aviation and public safety are matters that belong on the government balance sheet, nor can safety be compromised at all, given the clear responsibilities of the government with regard to aviation safety.

We would go so far as to suggest that this approach has become a substitute for proper and judicious management of the inspectorate function. And don't just take my word for it. We would encourage you to seek out the informed views of experts such as retired Alberta Justice Virgil Moshansky, a man who has extensively studied the aviation safety and management system impacts following the 1989 Air Ontario Dryden crash and who has subsequently given public statements, speeches, and interviews since. Justice Moshansky has been widely quoted over the years, but I would direct you to a series of excellent articles in the *Toronto Star* from June of 2006. In one of those articles, the justice is quoted as follows:

I am skeptical whether 'partner relationships'...are in the best interests of aviation safety. It is possible if they get too cozy, they'll maybe let things slip by.

Justice Moshansky has always said that a healthy and independent inspectorate is essential to aviation safety. We couldn't agree more. UCTE and other organizations representing pilots and other airline workers have presented, and will present further to you on Bill C-6. There will be some consistency of views in these presentations.

Government officials and airlines will present a countervailing perspective. It is up to you, as legislators, to determine what is in the public interest, but I would ask you to consider the following recommendations in light of the public interest. Remember that we are talking about the safety of the public when they fly in airplanes in Canada. Remember that no amount of delegation of system management will replace ministerial and government responsibilities and accountability. The government is responsible and accountable, and that's the end of the story. So we'd ask you, please, to consider these recommendations in this light.

The government process of designating external organizations is being increasingly practised but usually in areas where the implications are not that great and where the entire functions are being transferred to an outside body and where that body has no responsibilities except for those quasi-judicial regulatory functions.

In this instance, however, the government is proposing to designate external organizations to monitor compliance with its own rules and standards when the organization may have conflicting roles and accountabilities. We fail to see how this is consistent and even allowed under the Statutory Instruments Act, but we would also say that it completely contravenes any standards of accountability that are now part of government policy and legislation. We would recommend removal of the "designated organization" sections of Bill C-6.

Accountability and responsibility absolutely require that inspection reports and safety violations be made public. We would recommend the removal of all provisions that permit non-disclosure of inspection reports and self-reported safety violations. This recommendation would apply to all permissive non-disclosure, including sections 5.392, management systems exemption; 5.393, data flight recorder exemption; and 5.395, voluntary reporting exemption.

Thirdly, if safety system management structures are to be encouraged and permitted, there must be a system of continuous improvement built into the entire accountability structure.

• (1555)

It is impossible to have a well-functioning and continuously improving system that does not have effective external checks and balances and redresses for those errors and omissions uncovered by the external checks and balances. In this respect, we would recommend that all inspection and self-reporting disclosures be available to the public and that whistle-blowing protections be introduced into the statute.

Employees of airlines and airports should have the inherent ability to report safety infractions to Transport Canada inspectors without fear of reprisals from their employers or its agents. Additionally, along as SMS structures are encouraged and permitted, there should be more independent safety audits subject to disclosure.

All these recommendations would combine and bring together a process that has a chance to continuously improve.

Finally, the Canada Labour Code provides for a series of important workers' rights that apply to all federally regulated institutions, including airlines. The code provides employee protections for unsafe working conditions and enshrines employees'

right to know workplace hazards. For employees who work in the airline world, knowing their work environment is as safe as it can be is an important worker right.

The conflicts between the employee protections articulated in the code and the "designated organization" and "management systems" delegation proposals in Bill C-6 are very profound. We already are seeing the erosion of Canada Labour Code rights with SMS structures now in place. We believe that the primacy of the Canada Labour Code should be codified in Bill C-6 and the Aeronautics Act.

I hope that you find our positions and recommendations are in the public interest. That interest is to protect the travelling public in Canada and to exercise the responsibilities and authorities given to the government and the Minister of Transport in a responsible, transparent, and accountable manner. We believe our recommendations are entirely consistent with that principle, Mr. Chair.

Thank you.

• (1600)

The Chair: Monsieur Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

My first question is for Mr. Stoss. In your comments you highlighted the areas that Bill C-6 would cause to be changed. In most of them you indicate clear support—for instance, in the matter of the voluntary non-punitive reporting system and in the matter of the management systems and so forth. But in the first one you highlighted, that the act will provide the Department of National Defence with legislation and so forth, your view is perhaps not as clear.

Would you comment on whether you favour this particular amendment or if you have any reservations on this one?

Mr. Nick Stoss: Thank you very much for your question.

The current provisions of the CTAISB Act actually have provisions with regard to the Minister of National Defence conducting investigations. These amendments to Bill C-6 will not affect that provision within the CTAISB Act. Again, the concept of part II of the new Bill C-6 is to provide an enhanced capability to conduct investigations into those military accidents and incidents that involve civilians.

Because this particular provision in the act will not have any effect on the TSB's operations and investigations, I don't have an opinion with regard to the viability of the provisions of Bill C-6 in that regard.

Hon. Mauril Bélanger: So it's a neutral perspective. Thank you.

Madam Smith, I have a couple of questions, if I may. My understanding is that currently the act, under which you have authority, allows the tribunal to substitute its own decisions for those of the minister. Bill C-6 would remove that authority. First of all, is my understanding accurate here?

Mrs. Faye Smith: If I understand the bill correctly, Bill C-6 will remove that with respect to section 7, which is a suspension for immediate threat. The one that is being changed is section 7. But there is a refer-back—

Hon. Mauril Bélanger: Yes, but currently under section 7, the tribunal can substitute its own decision to that of the minister?

Mrs. Faye Smith: That's correct.

Hon. Mauril Bélanger: Under Bill C-6, you would lose that authority in that section, correct?

Mrs. Faye Smith: Yes.

Hon. Mauril Bélanger: Is the tribunal okay with that?

Mrs. Faye Smith: The tribunal is fine with that.

We've had maybe one section 7 case in 20 years. Frankly, it isn't one that frequently comes before the tribunal, but putting section 7—the suspension for immediate threat—on the same footing as section 7.1, which is the suspension of a licence for competence or failure to meet qualifications or conditions of issue.... The power of the tribunal in that circumstance is to refer it back to the minister. So it's putting it on the same footing.

Hon. Mauril Bélanger: I'd have to verify: if it's that particular circumstance, you're okay; if it's wider application, would you have some reservations?

Mrs. Faye Smith: It's just putting it in line with 7.1.

Hon. Mauril Bélanger: In your brief you referred to the increase of sanctions, yet didn't comment. In your view, \$5,000 to \$50,000 and \$25,000 to \$250,000, are these okay, too much, too little? Do you have an opinion on those?

Mrs. Faye Smith: Currently, the highest penalty that has ever come to the tribunal was probably in the nature of \$100,000, and it would have been multiple counts. Those are maximums.

Hon. Mauril Bélanger: So you're okay?

Mrs. Faye Smith: Yes, I have no objection.

Hon. Mauril Bélanger: Thank you.

Mr. Wing, I followed most of your presentation. I look forward to getting a written copy of your testimony. You certainly have some reservations, which are shared, by the way.

The pilots' representatives were in last week, and they also indicated some concerns with the designated organizations. They commented that some of the officials of Transport Canada had indeed said that the intent, as far as the officials were concerned, was that it would only apply to mundane issues and not in more serious matters. That may be so, but it's not reflected in the act or the bill as it's written and proposed. Of course, once something is law, the intent of the legislator has to be extracted from the written text.

Your proposal is that you would remove entirely—correct?—the designated organization reference from the bill.

• (1605)

Mr. Michael Wing: That's correct.

Hon. Mauril Bélanger: You said that the current SMS are eroding the application and the respect of the Canada Labour Code, the rights that flow from that for employees. Would you please elaborate on that? That could be a significant concern.

Mr. Michael Wing: One of the groups that I believe is looking to make presentation to the committee has brought to our attention that some of their workplace health and safety committees that fall under the guidance of part II of the Canada Labour Code are being denied access to safety issues that are not being brought forward because of confidentiality and non-disclosure.

We are not experiencing that ourselves. We know other organizations working for the industry have been experiencing this problem. I'm glad there is a concern there, because it's—

Hon. Mauril Bélanger: I have to stop here, because our time is going to run out.

Quickly, if those groups that have concerns are not going to appear, would you please convey that they can send their concerns in writing to us? I think they should.

Mr. Michael Wing: I'll pass that on.

Hon. Mauril Bélanger: Finally, if you have any written text of amendments from your association that you'd like to see this committee consider, please pass those on in writing. We can look at them and kick them around at committee when we get to the clause-by-clause study.

Mr. Michael Wing: We will.

Hon. Mauril Bélanger: Thanks.

The Chair: Mr. Laframboise.

[Translation]

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

My first question is for you, Mrs. Smith. You know that Bill C-6 had been prepared by the previous government and that we did not have the time during the previous legislature to have an in-depth debate about it nor to hear any witnesses.

The new government does not seem to understand the whole matter of transportation safety, even though it is very important. The famous Dubin report of 1982 which led to the setting up of the Transportation Safety Tribunal of Canada stated that safety has to be a responsibility of the government. Therefore, full powers were given to Transport Canada, and the government and the department had to take responsibility for safety.

The inspection function was strengthened, new inspectors were hired and so on and, in the end, if some licenses or certificates were suspended or canceled, people could turn to the Transportation Appeal Tribunal of Canada, an independent body, to get a hearing.

Am I mistaken or do I understand correctly the basic idea of the famous Dubin report?

Mrs Faye Smith: Yes, you are right.

Mr. Mario Laframboise: I want to ask you if you have ever felt in your work that the inspection system of Transport Canada was inadequate. Have you ever had that feeling? Do you think the system should be improved or that Transport Canada and its inspectors have carried out their work properly since you've been in your position or since the creation of the Tribunal?

[English]

Mrs. Faye Smith: Vis-à-vis the inspections that the inspectors do and the cases that come before the tribunal, if the inspectors did not do a proper inspection then that would go to the defence; they would obviously benefit by that. But we don't have any observations with respect to any derogation from safety in their inspections.

We don't see anything that we would comment on, is what I meant.

[Translation]

Mr. Mario Laframboise: Very well.

Looking at your report, I see that you deal with 150 to 200 cases per year. You make findings about those cases and, if you think that a decision was not made fairly, you tell the minister.

This is what the Dubin report had contemplated. However, where I see a problem is that some designated organizations—and I am referring here to ALPA, the Airline Pilots Association—have told us that with this Bill the traditional oversight function will be changed. As far as they are concerned, it is clear that the inspectors will not do the same work as in the past because the safety management system will have them work more as auditors than inspectors.

This is a concern to me because of the whole balanced system that had been recommended by Justice Dubin—I am trying to understand why some people are so intent on the changing the inspection system and I can't find any good reasons related to safety. As far as labor relations are concerned, since they are overseen by inspectors, I can understand why airline pilots would not like to be overseen by other pilots who are inspectors. I can see that there is a human relations issue here. However, for matters of safety, I fail to understand why the government wants to change the system.

I have no objection to adding a safety management system as long as we keep an inspection system that is as good as the one we have now, as well as inspectors who have received the same training and who are able to go anywhere to inspect the airlines.

It is difficult for me to accept that the inspection system should change. If that were to happen, would you have any concerns?

• (1610)

[English]

Mrs. Faye Smith: I really don't know.

As I say, I don't know what the rationale is for the designation to parties outside, as opposed to the government. I don't know what the driving force is for that, and I don't know what systems are in place to measure the efficacy of the system.

[Translation]

Mr. Mario Laframboise: My next question is for Mr. Stoss and is on the same issue.

The Transportation Safety Board of Canada conducts investigations after the fact, that is to say after there has been an accident. Since the Dubin report, have you ever felt that the inspection system of Transport Canada should be changed, perhaps because you would have seen that there were more accidents or that the system was not effective? I'm not referring here to adding an SMS but only to

keeping the inspection system. Do you believe that we should review the way inspections are carried out now at Transport Canada?

Mr. Nick Stoss: I shall answer in English.

[English]

The objective of our investigations into any occurrences is to find some deficiencies, and the basic process takes a look at the elements that contributed to those efficiencies, things that contributed to either a bad decision or possibly an aircraft malfunction. In our particular approach to that we generally look at those underlying factors, deficiencies, and then make recommendations on them. When we conduct our current investigations we do take a look at all the factors associated with an unsafe condition.

Now, in this regard the safety board does identify any items dealing with the adequacy of the current inspection system there, and of course we make recommendations on those deficiencies. In the past we have noted certain aspects of some of our investigations that may have had some weaknesses in them, and again, our particular role is to make those public in our findings. In the recent past we have not made any recommendations on any of the deficiencies they have found, because we have not determined them to be systemic.

[Translation]

Mr. Mario Laframboise: My last question is for Mr. Wing.

Could you explain to us the work of the inspectors? It is important for us to understand the work of your employees or of the people you represent and why this inspection system had been set up following from the Dubin report.

Mrs. Smith, you did that very well in your statement. Can you explain why there is a risk in changing the work of the people you represent?

[English]

Mr. Michael Wing: Thank you, Mr. Laframboise.

Our members are responsible for carrying out the responsibilities of the minister under the Aeronautics Act. It has a number of authorities that it is responsible for. It ensures, first of all, that the planes have been certified as air worthy and have been given a certificate to ensure that they're capable of flying. They are supposed to perform audits on these companies—on industry—I think, depending on the company, within a one- or two-year period of one another. They're also supposed to go back and conduct follow-ups to those audits if they find any problem with how the operations are being done. We've seen over the last number of years that there's been a reduction in this area. The number of audits that are supposed to be happening, the number of follow-up audits, the number of ad hoc audits, are not being done. I think the concerns you expressed in your questions to the other people earlier are very valid concerns.

You've mentioned Justice Dubin. I would ask you to please take a look at some of the comments from Justice Virgil Moshansky, the other person who has conducted probably the most significant inquiry into aviation in this country. He speaks directly to the concerns he has with regard to the reduction in inspections.

• (1615)

The Chair: I can advise you that we do have the senator coming to present to this committee.

Due to time, we'll go to Mr. Julian.

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

Thanks to each of the witnesses for coming forward, particularly to you, Mr. Wing. You've given by far the best presentation we've heard yet in terms of Bill C-6.

I wanted to start by asking if your union also represents railway workers.

Mr. Michael Wing: Not railway workers, but railway inspectors, Mr. Julian. Our members work for Transport Canada. The members who work in this particular area do not work for industry.

Mr. Peter Julian: As you know, we've had the safety management systems within the railways now for a number of years, and there were many concerns that have been raised. I just want to read for the record that the Shareholder Association for Research and Education has cited that the most recent safety figures available show that CN's accident ratio for the second quarter of 2006 increased by 56% over the second quarter of 2005, and for the third quarter of 2006 the accident ratio, again for CN, increased by 40% over the third quarter of 2005. So in a sense we have a problem that is escalating and getting worse.

What's your evaluation of how safety management systems have worked within the railway industry?

Mr. Michael Wing: I think the statistics speak for themselves. These are the very concerns we have about SMS in the aviation industry.

It's quite understandable that private companies would be interested in maintaining a bottom line. Some of these decisions that are being made on a day-to-day basis are a question of whether the bottom line is going to be affected, or whether safety is going to be affected. I think we've really seen, through what has been happening in the rail sector, what the outcome of that type of decision-making is.

Mr. Peter Julian: Did you see the *W-FIVE* program that was aired the week before last?

Mr. Michael Wing: I did not.

Mr. Peter Julian: That program was aired on CTV and said about the escalating accident rate:

Railway insiders say CN is not the only one to blame, and that government must bear some responsibility for the spike in accidents. Changes to railway legislation have taken power away from government—yielding more authority to railway companies to develop their own safety schemes.

Then the report quotes transportation consultant Greg Gormick as saying "This is about failed transportation policy".

On what has happened within the railway, certainly in British Columbia we've felt very keenly the increase in accidents—the deaths of railway employees, and the destruction of habitat. Would you say that the safety management system within the railways has been a failed transportation policy because of the results? On the Cheakamus River half a million fish died. Habitat was destroyed in Wabamun Lake. Deaths took place in the Fraser Canyon.

● (1620)

Mr. Michael Wing: I think the accident rate we're seeing in the rail sector is in direct relation to the reduction in inspection and the delegation of those authorities to industry.

Mr. Peter Julian: So in a sense, cutting costs has become an important component in how railway safety is balanced off under the existing system.

Mr. Michael Wing: I don't want to misrepresent or overstate. I don't think companies are making a decision to compromise safety or that safety is not going to be compromised, but it's the end result. When all of these cutbacks happen gradually, they end up affecting safety. I'm not going to say it's a deliberate decision on the part of industry. In some cases it's not intended. But whether or not the intent was there, we're seeing what the results are of those decisions.

Mr. Peter Julian: Okay. Thank you for that.

Moving on to the airline industry, you've been very clear that you believe there are some real risks and dangers in pushing ahead with a similar type of system for airlines. Is there anything within Bill C-6 that reassures you that we might not be seeing the same impact—inadvertent as you may say—that we've seen within the railway industry?

Mr. Michael Wing: I have no reason to believe there's anything in this legislation that would make the end results different on the aviation side.

Mr. Peter Julian: Thank you for that.

Mr. Stoss, you said in your brief that the provisions of Bill C-6 related to safety management systems are also of interest to the TSB, principally because this new approach has the potential to significantly improve the early reporting and resolution of potential and actual safety deficiencies. Would you admit that it also has the potential to have some of the perverse impacts we've seen within the railway sector?

Mr. Nick Stoss: The comments were based on our assessment that the safety management systems and the requirement to set the structures within companies, particularly companies that hadn't had these systems before, had the potential to ensure that more of the incidents would be reported and acted upon by the company. Those were my remarks based on the concept of the safety management systems.

Mr. Peter Julian: In theory—right? But we've seen what actually happens in practice. So is it not true to say there is a downside that is as evident as an upside?

Mr. Nick Stoss: None of our investigations to date into any of the occurrences in any of the modes has determined that was indeed the case, that there has been a downside.

Mr. Peter Julian: But the accident rate is much higher now than it was a few years ago.

Mr. Nick Stoss: Again, our investigations have not determined that factors associated with the number of inspectors have been causes or contributing factors to those occurrences.

Mr. Peter Julian: No, but you will admit that the accident rate is higher now than it was before.

Mr. Nick Stoss: I'd have to check the figures that you quoted. I know that last year, at the beginning of 2006, it was the case. For the end of the year, I don't have those figures with me.

Mr. Peter Julian: So we do have a higher accident rate. Obviously, then, if we have to weigh the potential for risk and the potential for an upside, we have to make sure we're putting the public protection first and foremost. Would you not agree with me there?

Mr. Nick Stoss: My comments would have to go back to the statistics. We did see a rise in them at the beginning of 2006, but I don't have the figures that say what they were at the end of 2006.

The Chair: Mr. Fast.

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

Just quickly, I'd like to again correct what Mr. Julian has suggested. Mr. Julian has suggested that there is an ongoing increase in the number of accidents in the rail sector. I believe you're correct, Mr. Stoss, that there had been an increase at the beginning of 2006. My understanding is that over 2006, the rate actually went down.

My concern here is the motive behind opposition to implementing a safety management system. Mr. Wing, I was concerned about one statement you made. You had suggested that whatever legislation was passed, it should respect the primacy of the Canada Labour Code. When we talk about primacy, we're talking about priority of one thing over another. Can you place that comment into context?

I'm concerned about public safety. Ultimately, for me, the most important aspect in everything we do at this table is to ensure the safety of the public, especially with this legislation. Are you suggesting that the primacy of the CLC should take precedence over public safety, or am I misreading that?

•(1625)

Mr. Michael Wing: No, that's not what I'm suggesting by any means. The context was the confidentiality and non-disclosure part of this act, and ensuring that companies didn't have to disclose when there were safety problems within the workplace. What I'm saying is that the health and safety provisions of the Canada Labour Code should allow for the disclosure of that information so that people in the workplace are aware of the hazards that exist in the workplace, and so that things can be done to address those problems that may happen within the workplace.

It was with regard to that specific part of this legislation, that requirement for disclosure.

Mr. Ed Fast: It was my understanding that the confidentiality provisions and the immunity provisions of Bill C-6 are intended to ensure that when there are problems within the industry, the people on the front lines—who in many cases are the ones who first receive notification or are made aware of those problems—have an opportunity to come forward without being penalized for that action. Is that how you understand Bill C-6?

Mr. Michael Wing: I understand that has been an explanation given by the department. We've had a number of briefings on it. All I can say—and I will take the advice of the chair to recommend it to those organizations that have had direct involvement with this—is that confidentiality and non-disclosure are being used as a way to

keep from employees information that could potentially affect their safety in the workplace.

Mr. Ed Fast: I understood you to say that you were supportive of whistle-blower protection. Is that correct?

Mr. Michael Wing: Our organization has a very long history of support for that legislation.

Mr. Ed Fast: It's my understanding that Bill C-6 is not whistle-blower protection, but it provides confidentiality and immunity to ensure that employees who come forward with the interests of safety in mind are not penalized for that.

I wanted to touch on something else, and that is—

Mr. Michael Wing: Within a company, though.

Mr. Ed Fast: Yes, within a company.

All the witnesses who have appeared before us so far, including Transport 2000 and the Air Line Pilots Association, all agreed that SMS was a significant step forward in ensuring the safety of the travelling public. With the Air Line Pilots Association, of course, we're talking about even their own members, the pilots who fly these planes.

I'm trying to understand what your position is. Are you supportive of safety management systems being implemented throughout the industry?

Mr. Michael Wing: In terms of the premise of your question, it would be irresponsible for us, as an organization, to put forward a position that would provide less safety within the workplace. That's not what we are putting forward.

As far as SMS are concerned, safety management systems, we do not object to a culture where safety is primary within an organization. There might be something that's very good about introducing that. Our concern and our experience have been what then happens at Transport Canada, with its removal of itself from the process and delegation of that authority to the industry to identify problems.

•(1630)

Mr. Ed Fast: There has been some suggestion that this is akin to either deregulation of the industry or a move to significant self-regulation. Transport Canada officials made it very clear that this is, in fact, not self-regulation, but a significant enhancement in safety. It's ensuring that companies take ownership of safety within their operations. In fact, the audit process that is being suggested by Bill C-6 is intended to make sure that at the end of the day we actually have an enhanced system.

This is not a move backwards. It's not even the status quo. At the end of the day, the intention is for there to be improved safety within the airline industry.

Have you received any indication that the number of inspectors is going to be reduced or that the audit process is going to be less rigorous than our overall inspection program is today? Do you have any evidence to that effect?

Mr. Michael Wing: Yes.

Mr. Ed Fast: Be specific.

Mr. Michael Wing: We have certainly seen a reduction in the number of inspectors at Transport Canada.

Mr. Ed Fast: Hold it. Bill C-6 isn't even in place.

Mr. Michael Wing: Right.

Mr. Ed Fast: You can't blame Bill C-6 for that.

Mr. Michael Wing: I don't disagree with that. I think Transport Canada has basically been carrying on as though this legislation was going to be put in place. They've been trying to get this through the House now for quite some time. They've already begun to change the way they do business.

Mr. Ed Fast: How many inspectors has Transport Canada gotten rid of?

Mr. Michael Wing: I will get those numbers for you and will give them to you, but I can tell you that the way in which inspection has been done is changing, and it's changing as we speak.

Mr. Ed Fast: Could you table that information with the chair?

Mr. Michael Wing: I certainly will.

Mr. Ed Fast: Thank you.

The Chair: Thank you.

Mr. Temelkovski.

Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.): Thank you very much, Mr. Chairman, and my thanks to all of the presenters.

Mr. Stoss, maybe you can expand a little bit. You said earlier that public reporting is done when it is only a systemic problem.

Mr. Nick Stoss: We report publicly on all our investigations. My comment was that we only issue board recommendations when we have a systemic problem. However, if we find a deficiency during an investigation, we will definitely report that deficiency in our report. Frequently, we'll take action to disseminate that deficiency to the industry or stakeholders at an earlier point in time in the investigation. We won't wait for the final report.

The only premise I had there is that we don't issue a recommendation on a particular issue unless we find it to be systemic.

Mr. Lui Temelkovski: Systemic would mean there were three or four occurrences, repetitive occurrences?

Mr. Nick Stoss: It is a common pattern in a number of investigations. We could take a look and say this particular element has been proven to be part and parcel of an occurrence, which means that it contributes to the occurrence in a number of areas. It's based upon the significance, according to the risk assessment that we have on that and including the possible consequences of the issue as well. So that is what we base our recommendations on.

Mr. Lui Temelkovski: By systemic problems, do you mean technical problems? Or are we talking about some other sort of problems such as human error and so on and so forth?

Mr. Nick Stoss: Our general approach to the investigation is that human error is a human fault. We'll normally look for the underlying factors that contributed to that particular human error. I'm talking about things that facilitated somebody's making a wrong decision,

for example. We normally get down below the human error to find out what contributed to that.

Mr. Lui Temelkovski: You mean things such as maybe fatigue, counter-fatigue measures of air traffic controllers, shift work and those sorts of things?

• (1635)

Mr. Nick Stoss: It could be a fatigue error associated with a current work program or with the number of hours worked. It could be an equipment problem. It could be an interface between personnel and equipment.

Mr. Lui Temelkovski: I was recently on a flight, and when we took off, we heard a pop. The pilot came on shortly after and told us not to worry, that it was one of the tires blowing up. He told us not to be alarmed because we had two tires and we could land with one. That was a frontal tire.

Six hours later, when we were landing in Toronto, he told us not to be concerned about it because we had four tires. So I was concerned that he didn't know his aircraft. Does that happen often?

Mr. Nick Stoss: I can't comment upon the individual pilot's decision or his communications. All I can say is that particular type of incident is reportable to us, the Transportation Safety Board, and it's also reportable to Transport Canada.

Mr. Lui Temelkovski: Ms. Smith, can you give the committee some examples of how investigations of accidents involving civilian and military personnel were complicated due to a lack of authority on the part of the Minister of National Defence and the Transportation Safety Board?

Mrs. Faye Smith: I'm sorry?

Mr. Lui Temelkovski: I'm talking about when the Minister of National Defence and the Transportation Safety Board are lacking authority. Are there ever any delays when they're mixed together?

Mrs. Faye Smith: That really doesn't affect the Transportation Appeal Tribunal, which is a separate tribunal determining cases related to licensing and enforcement of aviation regulation.

So something that was the subject of a Transportation Safety Board investigation might or might not go to the tribunal. It would only go to the tribunal if there were some infractions against the law that were subsequently determined, and the person wanted to appeal that. Otherwise we would have no interaction at all.

Mr. Lui Temelkovski: In the Transportation Safety Board, or appeal tribunal, do you feel that you have abundant personnel to take care of the situations that arise within a given year?

Mrs. Faye Smith: Yes, but again it's not the Transportation Safety Board. It's the Transportation Appeal Tribunal. It's a completely separate tribunal, a separate board from that of Mr. Stoss. He's with the accident investigation board, and I'm with the Transportation Appeal Tribunal.

Mr. Lui Temelkovski: Okay.

The Chair: Thank you, Ms. Smith.

Before I go to Mr. Lévesque, Mr. Stoss, you mentioned, referring to Mr. Temelkovski's example, that a blown tire is reportable? Does that mean it may or may not be reported?

Mr. Nick Stoss: One of those occurrences—when you have a blown tire—would be reportable through the Transport Canada system, through, I believe, the SDR system, and depending on the impact on the operation, we would all see a notification of it in the safety board. For example, if the pilot declared that he had a blown tire and he sensed some urgency on the approach and said that he needed some help, that would definitely be reportable to us under our regulations.

The Chair: Is he mandated to report it?

Mr. Nick Stoss: Anybody who knows of an occurrence associated with an event such as that would be mandated to report it to us.

The Chair: Thank you.

Monsieur Lévesque.

[Translation]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chairman.

I am not a regular member of the committee and I am not aware of all the details of the Bill which is more the field of Mrs. Smith and Mr. Stoss. However, I understand matters relating to unions since that is my field of expertise. One always relies on the reports of others. In the present case, I represent an eminent colleague whose work is very serious.

My riding is in the north of Quebec. On a third of the riding, there are no roads. I have to rely on small airlines to go from one village to the next. I am talking about small airlines which, very often, are barely able to cover their expenses.

With Bill C-6, the airlines will inspect their own airplanes, which raises serious concerns for me. In such a situation I wonder if the inspector whose salary, even though very modest, is the only source of income will take the risk to tell his boss that there is a technical problem that has to be resolved before the next takeoff.

Furthermore, we have in our riding a company called Avionnerie Val-d'Or which modifies airplane wings with a technology called the Advanced Wing Technology. That business wasn't profitable and the company succeeded in getting close to 19 million dollars from the British Columbia government. Also, the governments of Canada and Quebec gave it more than 2 million dollars to build airplane wings. A pair of those wings was installed on a Beaver airplane which later crashed in the James Bay area. Fortunately, the two American hunters on board survived but, normally, in such a crash, they would not have survived.

I would like to know who gave a license to this company, Avionnerie Val-d'Or, to build and install those wings. Who granted it a license to modify an airplane which had been built on the basis of particular load specifications? As a user of small airplanes, I wonder if the company will eventually be found guilty and if the verdict will be sent to me posthumously. That is my concern.

• (1640)

Mr. Nick Stoss: Once again, I shall answer in English.

[English]

The questions you asked are very interesting questions and very technical questions, as far as the certification of aircraft is concerned. Within the transport sector, the responsibility for certifying an aircraft and the rules under which these aircraft are inspected and certified are the responsibility of Transport Canada, so I can't voice an opinion on those. All I can say is that regulations are in place that guide the modifications to aircraft. The construction of aircraft and the regulations guiding how that is done and how the modifications are approved are totally the responsibility of Transport Canada.

I can say again that we have conducted occurrences investigations and have had findings regarding certain installations or certain modifications, but we have not had any that deal with systemic aspects of how the modifications are done, how Transport Canada approves the modifications. That's the first part of the question.

The second part of the question deals with the technicians at the working level and their capabilities. For each one of the mechanics, the people who work on the aircraft, how they are qualified again is a matter for Transport Canada. They're the ones who establish those rules of conduct. Again, although we have had investigations that have found the maintenance actions being conducted on aircraft have not been done properly, we have not found a problem with the certification process of the individuals in those particular investigations. Occasionally we'll find a training issue has been associated with them. But again, we have not had any where we have made any recommendations.

The Chair: Does anyone else care to comment?

Mr. Wing, very briefly please.

[Translation]

Mr. Yvon Lévesque: I was asking this question to know what would happen if a person was paid by a small company.

I will give Mr. Wing the chance to give his opinion.

[English]

Mr. Michael Wing: Monsieur Lévesque, if I understood your question properly, you were asking whether or not somebody who worked for a small private company would be able to deliver the same type of inspection as somebody who's working for Transport Canada. Did I understand that correctly?

[Translation]

Mr. Yvon Lévesque: That was a small company but, at the same time, I wonder what will happen with a large one such as Air Canada. If it pays the inspector's salary, would the inspector dare raising a problem preventing an airplane to take-off, for example?

• (1645)

[English]

Mr. Michael Wing: The further away the inspection is moved from Transport Canada, the greater the concern we have. If Transport Canada is going to be giving more and more of these functions to industry, as far as we're concerned, it's only going to mean a greater separation between Transport Canada and safety.

The Chair: Mr. Storseth.

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

This is very important legislation that we have coming before us today. As I'm sure most of you know, Canadians travel 25% more than people in other countries do. The safety of Canadians, which this bill is trying to address, is extremely important.

I think one of the things we have to do is try to break some of the myths or fears that are being purported around the table here.

Mr. Stoss, first of all, do you feel it's fair to compare safety management systems across the rail, marine, and air industries as apples to apples across the industry in regard to the SMS and the regulations that have been put in place?

Mr. Nick Stoss: I have no information to suggest how these various safety management systems put into place in different sectors are different, but I can probably agree that they may be put into effect in slightly different ways.

The basic theoretical concept of a safety management system does, however, remain consistent. It is basically a concept, and consequently the safety management systems should mean the same thing within all the different modes.

Mr. Brian Storseth: Do you see a significant benefit to adding that system to the aeronautics industry, as we're trying to do here?

Mr. Nick Stoss: I mentioned in my opening comments that I think a properly functioning safety management system will enhance the degree of reporting and the degree of response to the occurrences. To date we have not investigated an occurrence where we found a safety management system had deficiencies in the system itself.

Mr. Brian Storseth: Thank you very much.

I think it's a very important point, especially when we look at some of the other witnesses we've had come forward to testify that it would only enhance the amount of reporting, on top of the fact that the way this SMS is being put in place is not a stand-alone system. It is being put in place on top of the regulations that already exist.

I think it's very important that we try to debunk some of the myths some of our colleagues are trying to put out there.

Mr. Wing, you said we've had a decline in inspectors at Transport Canada. The numbers that I have actually show that we had an increase in inspectors from 2000-2001.

Mr. Michael Wing: Transport Canada inspects a lot of different areas. My understanding is there's been a reduction in the number of inspectors who are responsible for this particular area, and I believe there's a plan in place to have even fewer.

Mr. Brian Storseth: But you wouldn't disagree with the argument that there are actually more inspectors now at Transport Canada than there were in 2000-2001.

Mr. Michael Wing: As I said, Transport Canada is responsible for inspection and the safety of transportation systems across a very broad spectrum. I was only speaking to the aviation side of the house and the air industry in particular.

Mr. Brian Storseth: Do you have any numbers in regard to the rail industry and the number of inspectors who are currently in the rail industry, from the same dates of 2000-01?

Mr. Michael Wing: I've committed to provide some numbers to the committee, and I will go back and get the information for you.

Mr. Brian Storseth: All right. Thank you very much.

I want to ask Mr. Wing about the other aspect. Mr. Wing, you talked about how these inspectors are being limited and Transport Canada is pulling away. You're not seeing any decline in the training aspects or any of those aspects of Transport Canada, are you? We still have some of the most highly trained professional inspectors in the world, correct?

Mr. Michael Wing: I agree. I think that the work our members do is of the highest quality. My concern is to ensure that those types of individuals with those types of skills continue to be used to ensure aviation safety in this country.

It's no mistake that I mentioned in my brief that one of the reasons for moving in this direction to begin with was a view to reducing the number of inspectors who are in the system and the amount that Transport Canada pays for it. That is really one of the driving forces behind this legislation.

● (1650)

Mr. Brian Storseth: Mr. Wing, with regard to what you've already committed to getting for us, if you do find that there has been a decline in inspectors, could we ask you to give us some specifics, locations, some of the areas that are being affected the most by this? In which places are we seeing a decline in inspectors, and in which industries are we seeing a decline in inspectors? Because indeed the information I have seen in the past has shown the contrary, and I'm happy to hear that Transport Canada is not decreasing the levels of training.

In my regard, what we're doing with Bill C-6 is only enhancing the role of inspectors within the system itself, so I can only see them playing a larger role in this.

I guess I just have two more questions here. One is for Mr. Stoss. How does this legislation compare with legislation being presented in other parts of the world, such as the United Kingdom or Australia?

Mr. Nick Stoss: I'm not familiar with any differences. I just know that they are being implemented in those foreign states.

Mr. Brian Storseth: They are indeed being implemented—and they're deemed to be reasonably successful, from what we can see?

Mr. Nick Stoss: The information I have, again from general reporting, from general conversations with different safety organizations around the world, is that they are being implemented in some of the countries.

The Chair: Thank you, Mr. Stoss.

Monsieur Bélanger.

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

Perhaps, Mr. Chairman, it would be more appropriate—and I'm not suggesting that Mr. Wing cannot do this—if, as a committee, we ask from our government officials the complete statistics that we've been wondering about today, in terms of inspectors in Transport Canada in various modes of transport.

Could we possibly get that, either from our own analysts or from the departmental officials, so that we all have it? If the purpose is to try to say that in 2000 there were fewer than there are now, or whatever the purpose is, let's get the facts on the table, and we can draw whatever conclusions from the facts.

Is that a reasonable request?

The Chair: I think it would be important, from what I'm hearing too, if Mr. Wing would undertake to do it. I will ask the department also, to make sure that the numbers are the same.

Hon. Mauril Bélanger: Thank you.

I have a little problem with this notion that we're trying to debunk myths that the opposition may be trying to create by asking questions. It is the role of the people on this side to ask questions, and if it is seen as creating myths, well, I'm sorry about that, but that is certainly not the intent. The intent is to have facts on the table, and from facts make a judgment on the legislation that is before us.

Indeed the matter of SMS is being proposed as an addition-to and top-up. There are no changes to the regulatory requirements that have been presented so far. I hope we all agree on that. That's how it's been presented. They have been in place, even though the legislation has not. I think everybody acknowledges that too.

Am I correct so far? Would anybody care to say that was not the case, that SMSs are not in place now? All right. They are in place, not in legislation, but they are in place in actuality.

So if indeed the consequence of those, and that's what we need to ascertain, is a reduction in the number of inspectors, is the link there obvious? Are there fewer inspectors? Let's find out. And if so, is it because we have SMSs? And then in that case, there's a judgment call to be made, and that's the purpose of asking these questions, not to debunk myths or create them.

Does anyone care to comment on that?

Mr. Michael Wing: I have a presentation that the director general of civil aviation, Mr. Merlin Preuss, gave at the Canadian aviation safety seminar in April 2006. He's talking about organizational review, and he says:

By 2013, 46% of the current Civil Aviation workforce will be eligible for retirement or have already retired. Replacing these employees, let alone adding to the current workforce, to continue the current oversight regime given the current and predicted workforce demographics, is not feasible; therefore, major changes need to be made in the way we work—

There's a recognition that due to the demographics within the department, particularly within this section, they are going to be losing a significant number of inspectors, and they do not plan on replacing these inspectors, with the skills that these inspectors currently have.

• (1655)

Hon. Mauril Bélanger: Would you kindly table with the clerk that speech, or give us the reference so we can have it circulated to the members of the committee, Mr. Wing?

Mr. Michael Wing: Certainly.

Hon. Mauril Bélanger: Thank you.

Does anyone else care to comment?

I don't know how much time I have left, Mr. Chair.

The Chair: You have 30 seconds.

Hon. Mauril Bélanger: I'll skip the 30 seconds and I'll put my name up for another round, if that's possible, Mr. Chairman.

The Chair: Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Mr. Bélanger is beginning to see the light. It's getting better.

Here is the problem. This whole debate between Transport Canada and the industry started in 1998. Since September 2001, Canadians are more aware of safety issues. Our role as MPs is to make sure that industry and Transport Canada try to find a solution ensuring a certain level of safety while saving money.

That might have been acceptable in 1998 but I do not believe that, today, Canadians would tolerate the government trying to make cheeseparing savings at the expense of safety.

You have told us that the system is already in place, and I believe you because we were told that Air Transat is already using a safety management system.

How long ago did you notice that the system was already in place, Mr. Wing?

[English]

Mr. Michael Teeter (Consultant, Union of Canadian Transportation Employees): I believe the first order in council came into place in the summer of 2005.

[Translation]

Mr. Mario Laframboise: It is important for us to get the right data from the Department in order to be able to consider the impact this may have on safety.

Earlier, Mr. Julian made some good points. In the rail industry, the success has not been overwhelming. When you look at the statistics, you can conclude that it has been far from successful. One cannot say that the implementation of the safety management system in the rail industry has provided obvious benefits.

Is that what I should understand, Mr. Stoss, even if you seem to disagree with the statistics? The implementation of the SMS in that industry has not provided evidence of any improvement for safety. On the contrary, for some periods of time, one may wonder why it has been implemented.

Mr. Nick Stoss: I do not have any figures allowing me to comment at this time.

Mr. Mario Laframboise: But, if there had been any improvement, you would say so. In fact, if the system had led to any improvements, you would not hesitate to say so.

However, you cannot say so. Since you have to look at the figures, that means that the improvement is not obvious. As a politician, that is what I have to conclude.

I understand your position and I don't want to embarrass you but since there is no evidence of improvement, you cannot tell me that the implementation of the system has been beneficial as far as safety is concerned. You are not able to draw that conclusion.

Mr. Nick Stoss: I can tell you that our investigations have not revealed any weaknesses in the safety management system.

Mr. Mario Laframboise: I am not definitely opposed to the implementation of a safety management system if it can really improve safety and if it is transparent, as you said Mr. Wing.

One thing keeps bothering me. I still want us to have an inspection system meeting the expectations of the public.

I know there have been cuts in the budgets for training the inspectors. We will have more information about this when other witnesses appear and there will be evidence of those cuts. It is important for all of us to understand that the department wanted to make cuts and to save money.

Mr. Wing, can you confirm that today or are you going to give us evidence about this later on?

• (1700)

[English]

Mr. Michael Wing: What I can do is provide information that the department is already on the record as stating. This is why SMS is coming into place. It is really giving industry the responsibility for ensuring the safety of the system, despite the fact that the act itself requires the minister to—

It was interesting to have an opportunity to have a number of discussions with Transport Canada. In assuming that SMS was already in place, at a meeting earlier last year, their focus was already turning to how they would ensure that the public would understand this, so that when an accident does happen, Transport Canada won't be the one that is blamed. How would they make sure that industry is the one that is blamed and not the minister?

I have news for the minister: the Canadian public is going to hold the minister accountable for public safety. It doesn't matter if there's an SMS in place or not. It is going to be the minister. It is going to be the government that is held accountable and asked why this has been allowed to happen.

The Chair: We'll go to Mr. Julian.

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

I just want to read for the record the comments of the ADM from last April 25. He said: "There must also be a willingness on the part of the regulator to step back from involvement in the day-to-day activities of the company in favour of allowing organizations to manage their activities and related hazards and risks themselves."

That's the direction the government is going.

Mr. Stoss, how many derailments occurred in Canada in 2005 and 2006?

Mr. Nick Stoss: I'll have to bring you back the figures and provide them to you.

Mr. Peter Julian: How many reports would TSB have published on derailments in 2005 and 2006? You would know that number.

Mr. Nick Stoss: Again, I would have to come back for the precise number, but—

Mr. Peter Julian: Would it be three? Four?

Mr. Nick Stoss: I would suggest that it would probably be in the neighbourhood of five to ten, but I would have to come back to you.

Mr. Peter Julian: There would be five to ten, and we're looking at probably a couple of hundred serious derailments. Right?

So when the TSB is analyzing, and you stated for the record that there was no evidence of safety management systems actually having an impact, you're talking about, at best, maybe 2% of accidents occurring in 2005 and 2006 on which the TSB has actually published a report. So the TSB has not done an analysis of safety management systems. Am I correct?

Mr. Nick Stoss: Again, our general approach is that if we find out that there is a deficiency someplace, we'll find the underlying cause that contributed to it. In a particular case, if we found out that the inspection cycle was not being adhered to, we'd be able to make a finding on that issue.

Mr. Peter Julian: That's not what I asked you. I said that you have not done an analysis of safety management systems, even in that small percentage of railway accidents and derailments on which you have actually published reports.

Mr. Nick Stoss: All I can say is that for each individual investigation, we would go down to find the contributing factors. So we have done them from an individual investigation point of view, but we have not—

Mr. Peter Julian: But you have not done an analysis of safety management systems. Am I correct?

Mr. Nick Stoss: That's right. We have not done them by occurrence, that's right.

Mr. Peter Julian: Thank you. I just wanted you to be on the record on that, because it's very important.

So you can't really give your opinion of the TSB on safety management systems, because the TSB has not done an analysis of the safety management systems, even in that relatively small percentage of reports that you have done on accidents that occurred in 2005 and 2006.

I'd like to come to another issue, because—

The Chair: If I may, just to clarify for the record, I think the question that Mr. Stoss was originally asked was whether the SMS had been seen as being a fault or a reason for—He replied, strictly, that in the reports they filed, they didn't identify that as the issue.

Mr. Peter Julian: I understand that, Mr. Chair, but the point is—

The Chair: I just think it should be clarified, for the record, that he was asked a specific question about the SMS.

Please continue.

• (1705)

Mr. Peter Julian: Yes, and my question was in terms of the overall analysis. And I have my answer. There has not been an analysis done by the TSB, and that is important, for the record.

The TSB has said in the past, and I'm actually citing a speech that was given in 2005 by Charles Simpson, that it is very important to communicate extensively. Charles Simpson said, at that time: "Recently, we've been working hard to make our findings and data more accessible and more transparent. We publish and promote all our reports, in a very public fashion—".

In that sense, then, the TSB has always felt.... Your reports are very good; I read them whenever I get the opportunity. You have the principle within the TSB, and that's continuing, that these reports are public. Am I correct?

Mr. Nick Stoss: Yes.

Mr. Peter Julian: So that's an important principle.

The issue some of us have is if we transfer that responsibility to companies, there are companies that may not take appropriate action. I'm going to cite from the *Toronto Star* series that Mr. Wing talked about in his introduction. Pilot Ed Huggett worked for a company called Sonicblue Airways, and according to the newspaper report, his family and friends said that Huggett's "opinion of his employer soured as his list of safety concerns grew".

He complained to his father that his plane had blown a tire landing in Kamloops. Huggett told his father the company instructed him to inflate the tire and fly the plane back to Vancouver to be fixed. When he refused—worried a flat tire was a sign of more serious damage—he told his father the company asked him to fix it himself, even though he wasn't an approved mechanic.

Huggett was so vocal that fellow pilots elected him as their representative on the company safety committee. But around Christmas, the young pilot's attitude changed. He was no longer just concerned about safety, he was scared, his father recalls.

—Huggett confided to a friend that if problems at the airline weren't fixed, he felt someone was going to die.

Nine days before the crash, Transport Canada investigators had visited Sonicblue's offices and found that six planes had missed mandatory inspections.

Investigators discovered Huggett's Caravan was more than 270 hours past due for an inspection of the struts that hold up the plane's wings.

This is a situation where you had a young pilot who very clearly raised concerns with the company. He wasn't listened to.

How do you deal with that kind of situation? I'll ask all our witnesses to comment on that. If we're handing over—and that's certainly what the ADM said—taking that step back to allow organizations to manage their activities and related hazards and risks themselves, how then do we deal with situations like that? We've seen it in the railway industry. Obviously, there are concerns that we would see more of these cases in the airline industry.

Perhaps, Mr. Wing, you could comment first.

Mr. Michael Wing: I mentioned in my presentation that these people have to be able to go outside the company when those safety concerns are not being taken seriously inside the company. But the way the current legislation is being proposed, my concern is that non-disclosure confidentiality is going to be compromised if individuals do decide to go that route.

The Chair: Mr. Stoss.

Mr. Nick Stoss: I have a general comment on that. If so, those types of issues would be part of our investigation. If we found an issue like that contributing to the occurrence, we'd definitely report it in our report and make a finding as to the cause or a contributing

factor associated with it. That particular investigation is ongoing at this particular point, so I can't comment on it, but our investigation would be looking at all aspects of the company's operation.

The Chair: I understand, but it's after the fact. That's the concern.

Mr. Nick Stoss: That's our mandate. The mandate to ensure the ongoing, everyday safety of that particular company rests with Transport Canada.

The Chair: Mr. Jean.

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

I'll carry on with that conversation.

Isn't SMS supposed to find the problems before they happen, before you have to get involved and start inspecting? Isn't that the idea for SMS?

Mr. Nick Stoss: That's right, both for ourselves and Transport Canada.

Mr. Brian Jean: All right.

Mr. Wing was alluding to the issue of attrition and the reason why SMS is coming on board. It's very worrisome to members of this committee, I'm sure, that what I think I heard him suggesting is that SMS is coming about not as a result of Transport Canada and the government wanting to be safer, but you have evidence that suggests it's because there's attrition, and this is a way to fill the employment gap because such a large number of people are retiring, and there are not enough workers out there.

Is that what you're saying?

• (1710)

Mr. Michael Wing: Correct.

Mr. Brian Jean: Could you provide the clerk or the chair with any evidence you have of this? I heard you quote one speech, and certainly it indicates there's a problem with employment, and I'd agree there's a problem with employment across this country. We don't have enough people to fill the jobs, especially in the west and other parts. But do you have any other evidence besides that, which you could provide to the clerk, as to this being the modus operandi behind SMS?

Mr. Michael Wing: I'm happy to hear that Justice Moshansky's going to be coming to the committee, if I understood the chair correctly. Justice Moshansky will hopefully have an opportunity to talk to you about some of the contributing factors that were in place during the Dryden crash. His review of the industry went far beyond this being a problem related to de-icing. He did take a very thorough look at inspection, and that was a big part of his report.

He found at that time that we were at the beginning of making exactly the same mistakes we made back prior to Dryden. That's why he came out in November of 2006 and very strongly spoke directly about SMS and the number of investigators who are currently in the system.

I have a transcript of his speech here, as well.

Mr. Brian Jean: We're familiar with that, and we are going to hear from him. Obviously that's the mandate of the committee. However, what I'm curious about is whether you have any independent evidence besides his. Obviously he'll be providing evidence. Do you have any other evidence that that is their modus operandi, that that is the purpose of SMS? Do you have any other evidence?

Mr. Michael Wing: I can look through some of my documents.

Mr. Brian Jean: If you could, and you could provide that to the clerk, I'd be very interested to see that.

Mr. Michael Wing: Sure.

Mr. Brian Jean: Are you aware of what's happening in other countries, such as Australia, to which we seem to be similar in our adoption of the SMS system, as to the success or failure of it?

Mr. Michael Wing: We do get some anecdotal information from some of our colleagues in other countries. I'd have to say that the feedback we've been getting has been—That's one of the reasons we're taking the position we're taking. They're concerned. The only problem is they feel that mistakes were made too long ago to make any changes.

Mr. Brian Jean: In fact, some of the countries, such as Australia, are adopting it, or have adopted a different system, which, I understand, more closely parallels our own. Are you familiar with the success or failure that the U.K. and Australia have had recently, over the last years? We've heard evidence from other witnesses, before you and Mr. Stoss, that it's been tremendously successful. In fact, the safety ratings of these countries have gone up as a result of SMS. And they've found ways to prevent accidents, which seems to make more sense—being preventive rather than fixing it after the fact, when it's too late.

Mr. Michael Wing: Your question was whether I am aware. I don't have all of the details.

Mr. Brian Jean: Would you be prepared to provide any other details you have on the success or failure of SMS to the committee?

Mr. Michael Wing: Certainly. I'd be happy to provide whatever information I can put together.

Mr. Brian Jean: Are you familiar with plant sites? I'm from Alberta, and just about all of the plant sites that employ thousands of people have SMS systems that work very effectively to prevent accidents. I'm wondering if you or your group have looked into the success or failure of those particular SMS systems, and whether you are prepared to comment on that. My own understanding is that there are thousands of accidents that are avoided. Ongoing, it seems to improve and improve, because it's a self-reporting system that doesn't have any penalty for the employees that report.

Mr. Michael Wing: One of your colleagues asked me whether we object to SMS. This was kind of the premise of your previous question, and I would have to say no.

Mr. Brian Jean: Okay. Thank you very much.

Those are all my questions.

Thank you very much.

The Chair: Thank you, Mr. Wing.

Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, I want to shift gears totally here and seek some advice.

As is Monsieur Lévesque, I'm a fairly recent addition to the committee. I'd like to understand a bit more, Mr. Stoss, if you could help me understand, the implications of the additional authority that DND will have in terms of investigations. Could you just elaborate a bit? You talk about accidents that happen on DND property. Then there are the kinds of accidents that might involve civilians and so forth. Who's going to do what if this bill passes and becomes law?

• (1715)

Mr. Nick Stoss: Part II is there to establish how DND is going to investigate those specific types of occurrences dealing with military accidents and incidents and their civilians. That's all I can comment upon. Again, their legislation is relatively similar to the safety board's legislation.

Hon. Mauril Bélanger: So anything that happens at the civilian airports or in non-military areas would be investigated by the safety board.

Mr. Nick Stoss: Under our mandate and our legislation, we have a responsibility to establish MOUs with organizations that we may come in contact with during investigations. In that regard, we have a working arrangement between ourselves and the director of flight safety in DND on the conduct of investigations on site, such as a military aircraft and civilian airfield. That guidance allows us to have working relationships established and decisions on who will investigate what portion of the investigation.

Hon. Mauril Bélanger: So right now, if a civilian were involved in an incident in a military aircraft, who would be responsible for that investigation?

Mr. Nick Stoss: Currently the division is based on the type of aircraft being flown. If it were a military aircraft being flown, it would be DND's responsibility to conduct that investigation. If it involved a civilian establishment besides that, we would conduct a coordinated investigation between ourselves and the—

Hon. Mauril Bélanger: If it were a civilian aircraft on a military base—that might happen sometimes—who would currently do the investigation?

Mr. Nick Stoss: It would be based on our working arrangements. We have a matrix that decides who would lead the investigation, but we would conduct a coordinated investigation with DND.

Hon. Mauril Bélanger: You said in your testimony that part II of the legislation would create conditions that were almost identical... there would be an almost identical manner to your own in terms of investigations. What are the differences that would remain?

Mr. Nick Stoss: Our legislation dates back to 1998. Their legislation is coming into force now, so there are some minor differences between the legislation, but not significant ones.

Hon. Mauril Bélanger: Why not use that opportunity to upgrade yours as well? This is almost omnibus legislation.

Mr. Nick Stoss: We will be updating ours as well. The last time we updated was 1998, I believe. We'll be looking at reviewing our legislation again.

On the big difference in legislation being proposed under part II, those occurrences for which they will have additional powers are not investigations we would normally get involved with in a coordinated investigation.

Hon. Mauril Bélanger: Is it possible that some day we might end up with a situation where there is a bit of a conflict between who should or who wants to carry out an investigation?

Mr. Nick Stoss: There's the potential for that, but I believe our working arrangements with DND basically cover all anticipated situations.

Hon. Mauril Bélanger: Is it conceivable that you could have a situation that hasn't been anticipated by the protocol or MOU you have?

Mr. Nick Stoss: If we had the conceivable one we would be amending the agreement we have.

Hon. Mauril Bélanger: Okay.

So you have no concerns about having a situation where there is a conflict of jurisdiction or a conflict of authority. You believe the protocols that exist currently meet that.

Mr. Nick Stoss: The protocol has provisions for us to conduct coordinated investigations with DND.

Hon. Mauril Bélanger: Fair enough.

Thank you.

[Translation]

Le président: Mr. Lévesque.

Mr. Yvon Lévesque: Thank you, Mr. Chairman.

Before 2005, I was a layman about this. When I was elected, in 2004, I had the opportunity to visit some airports and I learned that one could not stay for too long between the fences close to the tarmac. One was asked to leave the place quickly.

In small airports such as the ones at James Bay or in Nunavik, the situation is now somewhat pitiful with luggage around the airplanes and other airplanes landing in the middle of all this. However, that is secondary. I have now learned that there may have been some slackening since 2005 or that fewer inspectors are available.

I have a concern and you may probably be able to put it to rest for me on the basis of your experience. You said a while ago that changes have been made to airplanes and to the building of airplane wings, and so on, and that the licenses are now being issued by Transport Canada. However, a question came to my mind after that. A license has been granted for which there may have been a lack of verification of the plans that were submitted. Maybe someone forgot to do their work.

About this company that is known for building airplane wings, when the time comes to change the wings of an airplane, it is not engineers who are there but laymen. It is people like me who decide to start a company and to change the wings on airplanes with staff that they have trained themselves. And they build wings for other companies. In Trois-Rivières, especially, there is a company that buys wings from them.

When the time comes to put the airplane back in service, is there an inspection? Based on your experience, do you think there should be an inspection before licensing that aircraft to fly again after the changes have been made?

• (1720)

[English]

Mr. Nick Stoss: Unfortunately, you're asking me to form an opinion on a particular issue that you're raising. All I can again say is that our job is to conduct investigations after we've had a serious incident or accident. The responsibility for commenting on the safety of the operation or regulating operations should be posed to Transport Canada.

[Translation]

Mr. Yvon Lévesque: I'm asking you a question, Mr. Stoss.

Before 2005, for example, when a company was granted a license to modify aircrafts, was it usual after the work had been done to have an inspection done by the Department before allowing that aircraft to fly again?

[English]

Mr. Nick Stoss: I apologize. But again it is a question for Transport Canada, and they are the ones responsible for the regulations and the application.

The Chair: Mr. Julian, do you have a final comment or question? You have a couple of minutes.

Mr. Peter Julian: Thank you, Mr. Chair. I appreciate it.

Mr. Wing, how long does it take to sufficiently train a top-of-the-line aviation inspector? What's the process?

Mr. Michael Wing: I don't know the answer to that question. My guess is that it would probably be about five years, depending on where the individual came from.

If these people came from industry and had some technical experience and background, it's quite possible that the period of ramping up would be less than it would be for somebody coming in without that background. I understand it's a considerable period of time.

Mr. Peter Julian: You're concerned about the imminent attrition rate, and you know there are inspectors who are going to be reaching retirement age. The figure that's most often cited is about 40% over the next five years.

If the government wanted to ensure we had the same level of safety, they would be investing right now to ensure that as the attrition rate increases, we'd have inspectors who are trained, adequately formed, and able to do the job. Is that right?

Mr. Michael Wing: That's right.

Mr. Peter Julian: The fact that the government isn't doing it, as you say, would be a sign that they really do not want to deal with the issue of the attrition rate. In a sense, for example, some of the comments we've heard about having fewer regulatory resources or fewer inspectors would be valid. We'd see the government investing now, if they really wanted to deal with the issue.

Mr. Michael Wing: The department is definitely moving into an SMS mode. There are going to be inspectors who are required to have a certain level of expertise, but more and more people are going to become more generalist. You don't need the same degree of operational experience to be able to take a look at systems.

For example, how many complaints have been received with regard to safety in a company? It's 149. I'm not sure if it's good or bad, but it's 149. And what was done in these ten particular incidents? "Well, we're satisfied to a degree that the safety management system in place is going to be effective." Thank you very much, and we'll see you in a year. But the most important part of the safety has really not been looked at, certainly not to the degree that it needs to be.

● (1725)

The Chair: You have one minute, Mr. Julian.

Mr. Peter Julian: Thank you.

You mentioned earlier that the follow-up audits are not being completed. Is it because there are simply not enough inspectors now

to do the work, or is it because Transport Canada is pulling out of doing follow-up audits? What's the consequence of that?

Mr. Michael Wing: Transport Canada has not been able to maintain a schedule of follow-up that they have followed for number of years. There's been a gradual decline in the number of audits that Transport Canada has been able to conduct because of improper resources or an improper number of inspectors to do the job.

The Chair: Thank you, Mr. Wing.

Thank you to all of you for attending today and providing us with some information that I'm sure we'll all deem very valuable down the road.

We're going to adjourn now, but I would ask members of the steering committee to stay for five minutes. I want to review what we have on the schedule for the next three to four meetings.

The meeting is adjourned.

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