



House of Commons
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 030 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, June 3, 2008

—
Chair

Mr. Mervin Tweed

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Transport, Infrastructure and Communities

Tuesday, June 3, 2008

• (1105)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 30.

Pursuant to Standing Order 108(2), the orders of the day are for a study of the current status of navigation protection of the Canadian waterways, including their governance and use, and the operation of the current Navigable Waters Protection Act.

Joining us today, from the Department of Transport, we have Mr. William Nash, director general of marine safety; David Osbaldeston, manager of the navigable waters protection program; and Cara McCue, manager of environmental assessment.

From the Canadian Environmental Assessment Agency, we have Yves Leboeuf, vice-president of policy development.

From Infrastructure Canada, we have Shirley Ann Scharf, director general of the issues management directorate, program operations branch; and Keith Grady, senior advisor for environment review and approvals in the issues management directorate, programs operations branch.

And from the Department of Fisheries and Oceans, we have Ginny Flood, the national director of environmental assessments and major projects, oceans and habitat sector.

Thank you, and welcome to all of you. I understand that you've been here and made presentations before. One of the requests of the committee was that we bring you back before our committee and just review the things we've heard and help us clarify some of the questions that have come up as a result of the other witnesses who have presented here.

So without further ado, I welcome the Honourable Joe Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you, Mr. Chairman, and thank you, ladies and gentlemen.

I guess this is just a continuation of the discussion we had earlier on. I have no doubt that you have followed, at least in part, some of the interventions that have been presented to this committee in the last little while since you were here. There are a couple of concerns that maybe you can address.

First of all, we heard last week about some of the advantages, perceived and real, and the disadvantages, perceived and spun, of the proposals that are before us, such as for minor works, etc. I wonder if

you have any observations you think this committee ought to take into consideration, given the testimony we've received so far.

Perhaps Mr. Nash and Ms. Scharf might want to talk about that first, because the discussions have really been about Transport Canada and infrastructure more than anything else; that's where the focus has been. And then we'll talk, if you don't mind, about the environment and DFO afterwards.

• (1110)

Mr. William J. Nash (Director General, Marine Safety, Department of Transport): Okay. Maybe I will turn to David Osbaldeston. I know that he has been following this closely from a technical perspective and will be able to shed some light on this.

Mr. David Osbaldeston (Manager, Navigable Waters Protection Program, Department of Transport): Yes.

Mr. Volpe, I'm not quite sure I understand your specific question.

Hon. Joseph Volpe: Initially, we had thought that perhaps this ought to be a fairly easy exercise, that we would make minor amendments—because they are minor—and that we would address those issues relating to infrastructure and the way the Department of Transport, in this instance, might be able to facilitate many of the applications that pile up and are actually going to be approved. But the process is unduly long, and apparently it does not have much to do with staffing and has everything to do with the procedural steps that must be taken, which will eventually end up exactly where everybody expects them to end up; that is, in approval—

Mr. David Osbaldeston: Correct.

Hon. Joseph Volpe: —of a very minor number, according to the list, and the additional costs associated with them, both in terms of time lost and actual material resources expended.

That's why I wanted to get your sense of some of the testimony that has been brought forward. As you know, last week we had somebody from Lake Ontario Waterkeeper, who appeared to suggest that these are not as minor as we had considered them to be initially.

Mr. David Osbaldeston: I have followed the testimony closely. I did listen to the latter half of the Waterkeeper testimony. Unfortunately, because of the vote call, we were back in the office and didn't realize that you were reconvening, but I had occasion to listen to the Internet coverage.

On the minor changes, I don't quite agree with the Waterkeeper view of the NWP processes, procedures, and constraints. I have to say that within the program, we've had very limited, if any, contact at all with the Lake Ontario Waterkeeper, or that particular association. I verified this with our sources prior to the hearing. I was the first to have any contact with that particular group.

As we have laid out before you in earlier testimony, these changes in process—although they are minor, as you have well put it—require, from a process standpoint, an amendment to the legislation in order to make them happen. And I think you have heard, as I've listened to other witnesses, that these minor changes requiring this legislative amendment will provide great, great benefit in time and cost elements to Canadians at large, in that they will allow us to look at the things that really matter to them more closely, by freeing up resources to industry and by enabling us to move forward more quickly with economic processes and projects that they have in place, and, perhaps most importantly, as you've mentioned, allow us, with our infrastructure colleagues, to assist in the rebuilding of Canadian infrastructure in the most expeditious manner possible, while at the same time ensuring that our environmental due diligence—which was the key or essence of the Waterkeeper concern—on the part of government is indeed practised and in place.

Hon. Joseph Volpe: Mr. Osbaldeston, do you mind if I just put the question directly to Ms. Scharf?

I say this because we had a sense—I think all of us did, though I'm not speaking for anybody else on the committee—that there had been engagement by Environment Canada, and in fact by the environment departments of the various provinces, in the process of consideration of the merits of the amendments proposed.

The Waterkeeper witness, while she didn't suggest it directly, left the impression that environmental communities—including, of course, the environment departments of the various jurisdictions around the country—had not been invited to the table when assessing whether these amendments were minor, whether they were process-oriented or whether they were in fact dismissive of the substance of the matter.

I want to get your take on whether that perception, left deliberately or unintentionally, was an accurate one.

•(1115)

Ms. Shirley Anne Scharf (Director General, Issues Management Directorate, Program Operations Branch, Infrastructure Canada): Thank you.

Certainly I understand the concerns of the waterkeepers and their concerns about the environment. So we appreciate that fact. And we have not been engaged in consultations with them. But both with them—

Hon. Joseph Volpe: Them, meaning the waterkeepers?

Ms. Shirley Anne Scharf: The waterkeepers, that's correct.

But I do want to speak to that point, because in that, as well as in some other things that have come forward, I think there's the assumption that we at Infrastructure Canada don't do an environmental assessment if the trigger isn't in the Navigable Waters Protection Act.

I realize this committee is very well aware of this distinction, but I would just reiterate for the record that when there is a funding trigger, that is, when the federal government gives money to a project, and when there is a detailed project description, we are obligated by law to conduct a full environmental assessment. We must conduct one. Navigable Waters Protection Act is part of that process, but we still must consult with DFO; we must consult to see whether environmental damage is done. And just from a practical point of view, we would not proceed with a project unless we solicited the expertise of Transport Canada and there was an assurance that the community was accepting of those results. So I just want to put that assurance to....

Hon. Joseph Volpe: But if it's not a funding factor, or it's just a question of a property owner wanting to make a different use of property or to build up the capacities that exist or to make some other changes, does Mr. Leboeuf automatically become involved, and is he brought into the process? And by "he", I mean his department.

[*Translation*]

Mr. Yves Leboeuf (Vice-President, Policy Development, Canadian Environmental Assessment Agency): Mr. Chairman, an environmental assessment will be started in cases where a decision triggers the process. To refresh your memory, I recall that we're talking about situations in which a federal authority is the proponent or cases in which financial assistance is granted to the project, by Infrastructure Canada, for example.

Hon. Joseph Volpe: In the case of private properties, that triggers no assessment, does it?

Mr. Yves Leboeuf: That would indeed be the case in certain situations. If I correctly understood the concerns raised in your hearings last week, you were talking in particular about the possibility that works other than minor works located on secondary waterways would be subject to the Navigable Waters Protection Act. In such cases, no environmental assessment linked to that trigger would be required. As for knowing whether that's a problem and, in that event, what the scope of that problem would be, my colleagues at the Department of Transport will probably be in better position than I to answer the question.

It is important to keep in mind that this kind of legislative initiative must be the subject of a so-called strategic environmental assessment, not under the Canadian Environmental Assessment Act, but under the cabinet directive on the environmental assessment of policy, plan and program proposals. That makes it possible to determine whether a gap might be caused in the environmental program field and, if so, to clarify ways of minimizing the extent of that negative impact.

Based on what my colleague Mr. Osbaldeston said, a strategic assessment of the initiative as it existed at that time was conducted a few years ago, and Transport Canada intends to update that assessment in light of the initiative as it stands now or as it will be following this committee's hearings and report.

[*English*]

Hon. Joseph Volpe: So what I hear you saying is—

The Chair: Mr. Volpe, I'm sorry.

Monsieur Carrier.

The Chair: I'm sorry, it's Monsieur Laframboise. Sorry.

[*Translation*]

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

I'm going to continue with you, Mr. Leboeuf, since we're dealing with this subject.

Regardless of the situation, an environmental assessment is done from the moment the federal government invests funds.

Mr. Yves Leboeuf: Indeed.

Mr. Mario Laframboise: Some witnesses told us last week that it was automatic. So, if funding is invested, you have to intervene in the matter.

Mr. Yves Leboeuf: Earlier I talked about a gap, but there isn't necessarily a gap. We'll have to see what project it is, whether it is funded by the federal government and whether it is subject to authorizations under the Fisheries Act or to a provincial assessment, which will be the case in many situations.

Mr. Mario Laframboise: It's never easy when you talk about the environment. I've received e-mails in the past few days. There isn't any environmental psychodrama, but it is important that you all be here today, including Mrs. Flood, from Fisheries and Oceans Canada.

You intervene from the moment there is a wildlife habitat problem. Is that correct, Mrs. Flood?

• (1120)

[*English*]

Mrs. Ginny Flood (National Director, Environmental Assessments and Major Projects, Oceans and Habitat Sector, Department of Fisheries and Oceans): Yes, if there's an impact on fish or fish habitat, then there would have to be a Fisheries Act authorization. If we were to issue a fisheries authorization or request the issuance of a Fisheries Act authorization, we would have to embark on an environmental assessment prior to issuing that authorization.

So, yes, but we also have—

[*Translation*]

Mr. Mario Laframboise: If the Navigable Waters Protection Act is amended, that won't change your actions in any way. From the moment wildlife habitat is affected, you will have to intervene. Regardless of whether the act is amended, Transport Canada's reason will in no way change yours as regards fish habitat.

Mrs. Ginny Flood: That's correct.

[*English*]

The Chair: Ms. Scharf.

[*Translation*]

Ms. Shirley Anne Scharf: I'd like to add something that is important because it will make it easier to understand.

Infrastructure Canada has funds from the gas tax and from federal funding, but not a project description, since this is a transfer. Infrastructure Canada is not the authority responsible for the entire environmental assessment. In this case, the trigger is Fisheries and

Oceans, the approval commission or the Navigable Waters Protection Act. That's simply a clarification.

Mr. Mario Laframboise: I think the gas tax should have formed a separate category in the budget, but, for the government, that obviously inflates the figures; it makes a lot of money for the municipalities. The fact remains that it's treated differently, that it isn't a direct subsidy for a project. I understand that. It isn't a project in which you invest, but a lump-sum amount that you pay to the cities for purposes that are beyond your control. In Quebec, it's the province that selects the projects.

Mr. Nash, those who fear a threat to the environment will be rereading us, and I would therefore like some clarification on the purpose of the request that is made and on the report that will be submitted by the committee. You deal with a large number of action requests, but a lot of approvals are nevertheless given, which, in relation to the current definition, has the effect of inflating the number of requests. That definition has to be rediscussed. You're receiving increasing numbers of requests for projects that you authorize in any case, which takes time and delays the process. Is that correct?

[*English*]

Mr. William J. Nash: You're very correct. From an overall perspective, you have the two approvals: the environmental assessment approval and the Navigable Waters Protection Act approval. In reality, if an environmental assessment approval is negative, the project doesn't proceed. That is to say, for more clarity, it could be very good from a navigable perspective, but if the environmental aspect isn't there, then it would not proceed. So from an environmental concern, I think my colleagues here have explained that these processes would still continue anyway.

From our perspective, these changes that are suggested would certainly improve our ability to carry out our work and at the end of the day would be better for basically all concerned, whether environmentalists or whoever. It would establish a more modern structure, a better way to look at what is navigable and what is not, and not to have a structure in place that could be considered as prohibitive, or even not necessary in some cases.

I don't know if you want to add something to this, David.

• (1125)

Mr. David Osbaldeston: Monsieur Laframboise, when you asked the question of DFO, "Therefore, if it affects fish you'll look at it?", the answer was "Yes". I think with the amendments that we have here, the essence is if it doesn't directly impact navigation, why are we—Transport Canada, marine safety—looking at it? It's not that it won't be looked at by others. We're simply in the wrong church, in the wrong pew, in this particular case, because that's what we're really alluding to with these recommendations for amendment, that there is no impact on navigation under these criteria we're proposing.

[*Translation*]

Mr. Mario Laframboise: You're requesting action because the definition that we've had since the act was introduced, which was amended or interpreted by the courts, means that you now have to act in cases where navigation is not involved.

That's the message you want to pass on to us?

[English]

Mr. David Osbaldeston: Exactly, sir. That's why we're saying if we can get into the right locale, which is navigation, we can free up our resources on these things that we shouldn't be looking at, because there is no navigational impact, and we know that, in order to put those resources against the things Canadians are really quite concerned about, which is the larger infrastructure projects that do have an impact on navigation and need our expert advice.

[Translation]

Mr. Mario Laframboise: Ms. Scharf, we talked about this matter earlier, but I would nevertheless like to ensure that environmental assessments will continue to be conducted in cases where federal funding is involved. In other words, the amendments will change nothing in that regard.

Ms. Shirley Anne Scharf: They'll change nothing in cases where we have project descriptions, as I already said. I'll give you an example. In the case of a minor work and a secondary waterway in which there is fishing or small fish are born, we have an obligation to assess the environmental aspects.

Mr. Mario Laframboise: Thank you.

[English]

The Chair: Mr. Masse.

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

One of the allegations that has repeatedly come forth from witnesses is that the current system, as the applications go through, is actually delaying or limiting projects because of time management, and so forth. I'd like the departments to respond as to whether they feel that their processes right now are actually hindering projects, and maybe which ones won't get done this summer. We're going to have a report issued, but nothing is going to change. So I'd like your opinion on that.

There have been repeated allegations, time and time again, not only in presentations here but also in letters coming in, that the bureaucracy is holding up the process right now. So maybe we could have a response to that as to whether you feel that collectively or individually—I'd like to hear from each department—you are to blame for holding up the actual files, and if files are going to be held up this summer, what would those be, as examples.

Mr. David Osbaldeston: We wouldn't be here if we didn't think there were some problems relative to delays in responding to our client needs with respect to files. So I would say yes, our processes and procedures cause concern not only for us, but, as you've heard from the witnesses, concern for our clients. But I would extend that, in that our processes and procedures, for the most part, because of the age and style of our act, are prescribed within the act, and that is where the concern rests from a Transport Canada standpoint.

We're looking for flexibility, and that's what these amendments are trying to put forward.

Mr. Brian Masse: I'd like to hear from other departments on this, especially because maybe there are some resource issues over the summer or whatever can be done. But what types of things are going to be held up across this country if the act doesn't change?

Ms. Shirley Anne Scharf: I'll speak to the issue generally and then to the specifics you have raised.

As we have testified here before, it does create delays of at least six months and more. Other testimony—Mr. Middleton's and others'—has indicated eleven months. It certainly could go up to that, but we know it can be six months and more.

It creates delays at three points. First, getting site access to assess the waterway or the work is one aspect that is difficult, especially, as you can imagine, with our climate and frozen conditions, and no site access aspect. Second, often promoters will have initial designs done, but then we don't know whether Transport Canada is the responsible authority or not. And then the third point, of course, is just the time it takes to do that approval, because we can't always operate in parallel, but operate in series, so it queues up.

With respect more generically to what areas, there are the water intake ones, which are going to be defined as a minor work if the pipe diameter is less than ten centimetres, for example.

A large proportion of our non-transport stuff is water treatment or waste water treatment. Those are extremely important areas for communities across Canada. So if we're having to do the full trigger of the full assessment for what are really minor works, then yes, it creates a queue, and it creates a queue in infrastructure that's central to communities if we're dealing with potable water issues.

● (1130)

Mr. Brian Masse: In the interim, could that queue be alleviated by increased staffing? Even if we don't get these amendments passed, are we just going wait around and see?

Ms. Shirley Anne Scharf: The system we're using now is working fairly well in the sense that it requires legislative change, undoubtedly, because the act doesn't give us this power, but what Transport Canada has done is set up a risk management system. In those pamphlets they gave you prior to March 11, they describe what is a minor work and what is not, and we use their expertise on that now. So everything isn't being held up for assessments of a diameter of pipe that is less than ten centimetres. We use that now.

The ambiguity still rests with definitions of “navigable waters” and “minor waters”, but at least we have that system in place currently.

On the issue of resources, I'm going to answer as others have answered in the past, and I think it's a fair and responsible answer for a manager in the public service.

Every year or so we will review our resources, whether skill sets or resourcing are fitting the functions and the needs we have. In this particular case, we haven't identified, nor have we done a full review, that if we don't get this we're immediately going to need five more people. Not at all. If the act passes, I think we will be in a stronger position, but on an annual basis, we are looking at our resources and the match to the number of infrastructure projects coming through the system and the needs of Canadians.

Mr. Brian Masse: What we're assuming is that even if we get this done and get it done right, it's going to solve the problem. Shouldn't there be a backup or some type of analysis to find out whether this is going to solve the problem or prepare for a transition?

If the situation is so bad now that we're hanging onto a report we're going to do that is then going to be tabled in Parliament... Draft legislation will eventually come back to the committee in the fall, and then hopefully, if the government stays, we will go through the fall and pass it eventually. It will then have to go through royal assent and be brought in through regulations. We're talking about a long time, versus that of applications that are actually being put on the desktop here.

I guess I'm just worried that we seem to be thinking that this is the recourse that's going to get it done. Should we not be looking at an analysis of manpower and training as part of this to get the job done? Even if this goes through, it may not be entirely successful. We might find some shortcomings.

I'm looking for that type of backup.

Mr. David Osbaldeston: Mr. Masse, your point is well taken. I think I indicated in earlier testimony, with respect to Transport Canada and our prescriptive processes and procedures, that over the course of the last year we undertook, with our environmental affairs director, our aboriginal consultation group, and our legal counsel, to determine where we could find further streamlining by redefining, or better defining, roles and responsibilities and by identifying and removing any redundancies within our overlapping systems, in some cases. We have been conducting that study. Draft reports have been made to Transport Canada, although they've not been approved in any way, shape, or form. They're under review right now. They did take a look at staffing issues, even potential reorganizational structures, all of which resulted in a premise that from our standpoint, the essence of any real success will be legislative amendment.

The answer is that yes, indeed, it's part of a puzzle. And those are all pieces of the puzzle that need to be added in.

Mr. Brian Masse: Can you table that for the committee so we get that analysis? That would be important, I think, for our work as we get our discussion paper done. Then we'll start to craft some type of legislation.

• (1135)

Mr. David Osbaldeston: We'll have to move that up the line. It's in draft format right now. It hasn't been accepted by Transport Canada. We'll check on the status of that.

Mr. Brian Masse: We could even get it for when we come back in September.

The Chair: Mr. Fast. The clock is running.

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

Thank you to all of you for appearing today.

I want to echo Mr. Masse's concerns about the projects that are already either in the hopper or on the cusp of being submitted. Legislation does take some time, even though I think we're talking about amendments rather than a wholesale replacement of the act.

I want to remind the members of this committee that this is an act that is a century old. It has undergone virtually no change since it was first introduced.

Mr. Osbaldeston, I share your concerns about some of the testimony Krystyn Tully gave last week. She drew on what she claimed was public policy and law going back 2,000 years. The Canada we know today didn't exist 200 years ago, let alone 2,000 years ago. One hundred years ago, when this act was introduced and passed, we didn't have motorboats on our lakes. We didn't have all the environmental assessment processes we have at municipal, provincial, and federal levels, which now are additional layers of protection for our environment.

I'm somewhat frustrated by that kind of approach. I think Ms. Tully did admit that this was an act that addresses navigability, as opposed to the environment. Then she spent 80% of her time trying to convince us that it's actually an environmental act.

I think we need to move forward. We have an old act that no longer meets the needs of a 21st century Canada.

My questions are going to basically use as a platform some of the other questions that have already been asked.

This is a question for you, Ms. Flood, or perhaps for Mr. Leboeuf. You've had a chance to review the Navigable Waters Protection Act, have you? Do you believe that the current act, that particular act, needs to be used as a trigger for environmental assessments?

Mrs. Ginny Flood: I wish you had asked Yves first.

I think the purpose of environmental assessment is that it's really a planning tool. As regulators, before we make a decision we have to assess what the environmental impacts are of those decisions. That is the purpose of the environmental act. I think what happens often is that it's confused as being an approval for a project.

From my perspective, the environmental assessments exist so that whatever is taking place within a project—for instance, if there are going to be negative impacts to fish and fish habitat—we can ensure that we look at ways to make the project better, to mitigate those impacts, and to compensate if there's any loss to fish and fish habitat.

Really, I don't think it's so much whether they should trigger environmental assessment or not, it's the role that environmental assessment plays in helping us decide if there are going to be negative impacts and how we can work with proponents and communities to figure out ways to mitigate those impacts. It should be win-win for everybody.

Mr. Ed Fast: All right. So the role that you're asked to play in this process is not going to be negatively impacted by the amendments that have been proposed at this committee.

Mrs. Ginny Flood: I don't see that the amendments that are being proposed are going to change our role other than that we may not be interacting with Transport Canada as much as we would normally as a regulator. But that doesn't preclude their interacting with us as a federal authority, as an expert on a navigable water issue, even though it might not be defined as navigable water. There may be issues we might want to talk to them about, and it doesn't preclude us from seeking their advice on certain aspects.

Mr. Ed Fast: Mr. Leboeuf.

[*Translation*]

Mr. Yves Leboeuf: I want to thank Mrs. Flood. Her explanation of the objectives of the Canadian Environmental Assessment is as good as what I could have given.

In general, the question is not really whether the authorizations under the Navigable Waters Protection Act should or should not trigger an environmental assessment. In my opinion—and Mrs. Flood alluded to this—it is to go back to the basis of the Canadian Environmental Assessment Act. That basis is to ensure that, before any decisions are made, regulatory or otherwise, the various departments together consider the environmental implications, so that those decisions are not only valid for the purposes of the objects of the legislation in question, but also properly informed with regard to the broader environmental implications. At that point, we'll try to minimize those impacts. As in the case of other types of authorizations, requiring environmental assessments in the context of authorizations under the Navigable Waters Protection Act is definitely entirely consistent with the objectives of that legislation.

As to whether it is appropriate in the context of this proposal to amend the Navigable Waters Protection Act to exclude certain minor projects from the authorization process under that act, I will point out that that is not in itself an environmental issue. As you said, the Navigable Waters Protection Act is related to navigation; its purpose is not to protect the environment. After listening to my colleagues and examining the previous hearings, I will say that, if the motivation behind the proposed amendments is related to valid navigation objectives, the matter poses no environmental problem. If the underlying motivation were instead to eliminate environmental requirements, that would be a different matter, but there is nothing to suggest that's the case.

• (1140)

[*English*]

Mr. Ed Fast: Of course, that's not the case. I don't think anyone at this table has suggested we're eliminating environmental overview. That's not happening here.

This question is for Mr. Osbaldeston, or perhaps Ms. Scharf.

What we've just heard addresses the environmental concerns that have been raised by some, a very small minority. There's the other issue, which is navigability.

We haven't actually had the paddlers before us, the canoeists, the people who use the waters for recreational or even commercial purposes. Have you had a lot of push-back from that community? They haven't appeared before us. I believe they've been invited, but they haven't been here.

I would assume it's not a huge issue for them, but perhaps you could comment on what kind of interaction you've had with them.

Mr. David Osbaldeston: We've not had a lot of push-back from the recreational canoe and kayak associations. I'm aware of the association that has provided the brief—the Friends of the Kipawa—and I think I've mentioned before that we are in litigation with them over a certain situation right now, which doesn't need to be discussed here.

However, I think the essence of the canoe and kayak situation is that the recommendations we have proposed here or the concepts we have here for review we don't think limit their paddling or kayaking capability. Indeed, we outlined to you previously—I believe it was in our March letter, which we sent to you—what type of criteria we would be considering if we were going to take a look at non-navigable waterways, and it would be water that was too shallow to paddle and too narrow to paddle, or you'd be going back and forth and sideways so often in such a short span of time that it wouldn't be reasonable. You wouldn't be going forward or have any forward progress. Or it would be too steep, if it were waterfalls. It's that sort of thing. That's not where the agencies for reasonable canoeists or kayakers are canoeing or kayaking, so we would see a very limited impact, if any.

The Chair: Thank you, Mr. Fast.

I think, just for the record, that we did invite the paddlers and canoeists. It was a late invitation. One group didn't respond to us, and the other responded with a written document, so we do have some of that information for the members.

Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Mr. Leboeuf, you mentioned strategic assessment under cabinet guidelines. I was wondering if you could expand a bit on just what that is.

Mr. Yves Leboeuf: This is a cabinet directive that was adopted about ten years ago, actually. It's been in place since then. It's not a legally binding instrument, but it's politically binding in the sense that it provides the cabinet's expectations for departments and agencies with regard to what they are required to do prior to submitting the proposal for cabinet consideration.

Essentially, it requires that there be an environmental assessment for any policy plan or program proposal submitted for ministerial approval. That would obviously be at a high level and not at a project level, a qualitative level rather than a quantitative level. That way all the environmental implications—both positive and negative as well as the overall environmental implications of the proposal as it is crafted—can be considered so that when the proposal is submitted for cabinet approval, the cabinet decision can be made with full understanding and knowledge of the environmental implications.

Typically, when a detailed strategic environmental assessment is conducted, options to mitigate the potential adverse impacts resulting from the proposal or proposals or to enhance the positive impacts that may result from the proposal are attached. Again, it's not legally binding, in the sense that even when it goes to cabinet, cabinet is obliged to comply with it in terms of attaching mitigation measures, for instance. The whole purpose, like the project EA process in a way, is to make sure the decisions that are made at the project level or policy level are well informed from an environmental standpoint.

As I mentioned earlier, I was informed a bit earlier by Mr. Osbaldeston that such a strategic assessment of the initial initiative that is before you was done, and the intent is to update that strategic environmental assessment as the initiative is fine-tuned.

• (1145)

Mr. Don Bell: Okay.

My final question is maybe a bit beyond navigable waters specifically, but it's the whole process, because you alluded to it, of environmental approvals.

We have the port of Vancouver, with some of the extensions that are going on. I was in Shanghai a year or two ago, and I saw, I think, the Donghai Bridge...32 kilometres to the port at Yangshan. I think it was three or four years from concept to completion. After three or four years, we would still be in the preliminary environmental assessment period, I presume.

I'm not suggesting that China's approach to environmental assessment is the right approach. I'm the critic for the Pacific gateway strategy, and one of the concerns we have is maintaining our competitiveness in terms of expansion of our port facilities, whether it's Prince Rupert, which we've done, or in the port of Vancouver—combined port with Fraserport—and ensuring that we have the capability to handle the volumes that are there.

Otherwise, if we don't show we have that capacity, we will have those shippers bypassing us and automatically going south to U.S. ports. It's really important that the ports of Vancouver and Prince Rupert have that capacity, as the gateway to Canada from the Asia Pacific, in a significant market that's growing.

The comparison to the navigable waters is as you're dovetailing.... I think the question Mr. Masse asked earlier related to how you coordinate these to try to minimize delays, to ensure you're doing the job that has to be done, but that you don't end up with sequential considerations, you end up with parallel considerations, which I think Ms. Scharf talked about. That's what I would hope we would look at.

Ms. Shirley Anne Scharf: Perhaps I might respond to both dimensions of that.

On the port aspect, while I am not administering the gateways fund, as that lies with Transport Canada, I just wanted to point out as well that there is strong recognition of the delays that series of regulatory approvals can bring, especially even when we're not funding federally, but it just triggers a number of approvals. Port authority is a perfect example, and Yves can speak to this as well.

There is a major projects initiative being led by Natural Resources Canada, in which we are intimately involved, that is now looking at that issue, ensuring that we do remain competitive and that we do have ways of ensuring coordination.

I won't use the word "streamlining" because I think other witnesses have misinterpreted our meaning of that. Coordination is the key.

With respect to us—and Keith can comment as well—one of the things we do when we do our environmental assessment is we can be dealing with fish spawning, so we're dealing with DFO. If there are aboriginal burial sites, we could be dealing with INAC or with Parks Canada federal land, as well as with navigable waters.

We try to bring all of these groups together early on in the process to get a sense of how long this is going to take, because for us, as the committee well knows, this all has a real cost. Promoters of projects and proponents are lined up and ready to go, and once we have the go ahead we have to get into our contribution agreements.

I'm wondering if you two might have any other further comments on that.

• (1150)

Mr. Keith Grady (Senior Advisor, Environment Review and Approvals, Issues Management Directorate, Program Operations Branch, Infrastructure Canada): Just from a practical perspective, the coordination issue is really key. One of the things—and I think it comes back to Mr. Masse's question as well—is the flow of information. The information that Transport Canada requires for NWPA purposes to determine whether or not they need to issue a licence can be quite detailed, and therefore quite far along in the project planning process. It may be out of sync with the rest of the assessment work that's going on, and it creates confusion, because we're never quite sure.

There may be situations where we're not sure whether or not Transport Canada is a responsible authority under CEAA with respect to one of our projects because that information is not available at that point in the project planning assessment process. That becomes an issue that it's not within government control, it's with the proponents to go through their normal planning process. But it does affect our ability to coordinate and it does affect the timing of our assessments as well.

The Chair: Monsieur Carrier.

[*Translation*]

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

Good morning, ladies and gentlemen. I am pleased to see representatives of the three departments involved in the environmental study of various projects. I would like to ask Mr. Leboeuf a question concerning the Canadian Environmental Assessment Agency.

Under your mandate, are you required to officially issue a report on the projects you examine, in which you are involved?

Mr. Yves Leboeuf: First of all, as my colleague Mr. Smith explained at the March 11 hearings, the process put in place under our act is a self-assessment process. Our agency is not responsible under the act for conducting environmental assessments, but rather the various departments and agencies that are required to make decisions concerning the projects. Our agency does not prepare the environmental assessment reports, but rather the various departments.

The purpose of those reports is to inform federal decision-makers. Ultimately, the process put in place under our act is not a decision-making process. Its purpose is to generate environmentally relevant information and to bring it together in a report containing findings and recommendations. At that stage, it is up to the various federal decision-makers to consider those recommendations and to determine to what extent it is appropriate to incorporate them in their decisions.

Mr. Robert Carrier: I wanted to assess the impact that you have on the recommendations. If they remain internal, we don't know them. The departments remain responsible for their decisions. You merely give them advice and opinions. That takes away a lot of importance from a public agency that seems to advocate broad environmental responsibility.

Mr. Yves Leboeuf: I can understand why you see it that way. Moreover, a number of people initially understand, if only from the name of our organization, that our mandate is to conduct environmental assessments or to give scientific advice in the context of environmental assessments. However, that is not the case.

The agency's role is really to provide support in training the various departments involved in environmental assessments and to advise the Minister of the Environment, where the minister has to make decisions in the context of the process. The scientific advice that the various departments conducting environmental assessments must obtain comes instead from what we call the expert departments. If Transport Canada, for example, has concerns about fish habitat in the context of an environmental assessment, it will turn to Fisheries and Oceans, not to the agency, to get that expertise. If it has concerns about migratory birds, it will turn to Environment Canada. The agency's role is not to provide scientific opinions.

Mr. Robert Carrier: In that case, every department, whether it be Transport Canada or Fisheries and Oceans, has expertise and competencies. It would be difficult for you to advise Fisheries and Oceans on the displacement of fish habitat. If the department decides that everything is fine as it is, your opinion becomes secondary.

Mr. Yves Leboeuf: Our opinion doesn't necessarily become secondary. That's where you see the importance of public participation in environmental assessments, particularly for more controversial projects. The public, environmental groups and others will give their views and express their views on the expert opinions issued by the departments. All that ultimately weighs in the balance.

• (1155)

Mr. Robert Carrier: I would like to cite a specific case. In my riding, I've been trying for a number of months, if not years, to obtain information on the Highway 25 bridge. I find the information I have obtained to date confused. I asked Mr. Grégoire, the Assistant Deputy Minister, Safety and Security, of the Department of Transport, some questions. He told me there were conditions for

the installation of permanent structures in the habitat of the lake sturgeon, which would have to be moved to the Assumption River basin.

I spoke to the minister, since we don't really know who to turn to. On April 25, I received a letter from Fisheries and Oceans stating that the sturgeon spawning ground had ultimately been moved to the Ouareau River basin, which is located approximately 50 kilometers away. From the standpoint of the immediate environment, that intrigues me because we're talking about the Rivière des Prairies.

That letter stated that the environmental assessment had been completed on February 28 under the Canadian Environmental Assessment Act. It's very reassuring to read that kind of thing. The end of the letter states that work on a pillar on the north bank has been authorized and that a second authorization will be issued for other work later. So that seems to indicate that the present authorization is incomplete. Perhaps that's because of the sturgeon spawning ground.

I can't find out where this project stands. As an MP, I would at least like to provide electors with assurances that the Canadian government has played its role properly and that everything has been complied with, but it is hard to do that for the moment, since there are two departments, one agency—

Ms. Shirley Anne Scharf: Is that project also funded by the federal government?

Mr. Robert Carrier: No, it's a provincial project funded by the Quebec government.

Mr. Leboeuf, in your document, you say that there are special federal-provincial collaborations. You say that, under agreements, only one environmental study was done. It was done in Quebec by the Bureau d'audiences publiques sur l'environnement (BAPE).

Is this a case that you are virtually not concerned with, since the study has been done? The documents I have state that you are handling it.

Mr. Yves Leboeuf: It's a preliminary review, which is the simplest type of environmental assessment under our act, in the context of an environmental self-assessment process. As you emphasized, two federal departments, in the context of that project, have decisions to make: the Department of Transport, Infrastructure and Communities, under the Navigable Waters Protection Act, and the Department of Fisheries and Oceans, under the Fisheries Act. Those two departments are acting as authorities and are responsible for conducting the environmental assessment of the project, which, as you said, was completed in February or early March, according to the information I have. I'm going by the date that you have, which is February 28.

As for the coordination which was or wasn't done from the BAPE hearings, or from the provincial assessment, which was conducted by the provincial environment department even before the BAPE hearings, there again, I'm relying on my Transport Canada and Fisheries and Oceans Canada colleagues, who probably have more information than I do on the nature of that collaborative effort.

[English]

The Chair: I'm sorry, we're way over time.

Mr. Shipley

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman. I'll try to keep it to the point.

I wonder, Madam Scharf, if you might.... I'm glad we have people who are concerned about the larger projects. I come from an area where it's rural small community—agriculture—so I'm going to try to work around some of those comments.

One of the concerns is that when a private construction is done—it has been raised, particularly by the last delegation the other day with the Ontario lakes people—how do you deal with it in terms of an EA? What triggers an EA in that particular case?

• (1200)

Ms. Shirley Anne Scharf: From an infrastructure point of view, unless, as I mentioned earlier, we're putting in funding and we're getting a project description, we are not, to use Yves' point, the responsible authority coordinating the whole thing. In those cases where we wouldn't be the responsible authority, if it impacts on fish, on federal lands, and right now, of course, navigable waters—Yves can add to this list if I've missed anything—those are the areas that would trigger either a regulatory permit or.... In this case it's a private person, so we're not the promoter.

If the feds are the promoter, they automatically have to do an EA. From that point of view, they're faced with a number of different permitting or regulatory approvals that they need. In the case where we fund and we have a project description, we coordinate that. We try to get it all in hand for them, and we work with them to see them through those challenges.

Mr. Bev Shipley: There's a project. It's on a municipal road—a back road. It's a bridge that has deteriorated. It has to be replaced. The municipality is funding it. There's not direct funding in terms of an application for it, but there is funding through the gas tax rebate. Is that considered to be federal funding if they take a portion of that money and use it towards that particular project?

Ms. Shirley Anne Scharf: This is that unique case. When we do a block transfer, even though it's federal money and we don't have a project description, we are not the responsible authority. In those cases it's the permitting or the regulations, or their provincial regulations or municipal bylaws.

Mrs. Ginny Flood: It doesn't preclude that there wouldn't be any federal regulator on the project just because the funding hasn't flowed. There may be a regulator, such as DFO, involved in that project. I'm not sure what project we're talking about, so I can't give any specifics. But certainly we would be working with the province if there was a provincial EA.

Mr. Bev Shipley: I agree that there would be. I was mayor of a municipality, and I can tell you that DFO shows up at just about everything. That happens to lead, Ms. Flood, to another question following the one I had to Ms. Scharf in terms of the funding.

This legislation is about improving navigation of our waterways for transportation. What happens is that it may be over a creek or a stream that has water in it year round, but not a lot, and it could get brought in under terms of having some navigable waterways. We've had some where the discussion was that it sits dry for the greater part

of the year, but it still had to go in judgment of whether it was actually a navigable stream or not.

That takes me to DFO a little, because we cannot get away from the tie-in. We have the DFO regulations that come in on a stream, and I don't have the wording, but it's where you can't harm or harass any species. There was talk earlier from my colleague about holding up projects. I'm wondering, Ms. Flood, where the balance actually is.

I've had a project where the waterway was filled with silt that had come off farmland and there was some species at risk in it. I could have taken you up the road two miles where they were plugging the intakes, as there were so many of them up and down the streams, but it stopped this project, quite honestly. If we harmed a species taking it out, then there would be a charge. Nobody was willing to take the risk.

I'm looking for an answer on how we get some balance here of what the benefit actually is, or if there's a benefit, so that these projects don't get held up, sometimes, quite honestly, inadvertently.

Mrs. Ginny Flood: I would definitely agree that it is a challenge, because DFO is pretty well everywhere.

It's interesting with the question on resources. One of the ways we're trying to find the balance is by applying some risk management principles and looking at how we can mitigate. It's not to circumvent CEAA and not do an environmental assessment, but there are ways and we have tools that if work is conducted in a certain way it will not create a HADD, which is the "harmful alteration, destruction, or disruption" of fish and fish habitat.

Unfortunately, the Fisheries Act is very specific about how we apply it with respect to environmental assessment. We are trying to find ways to work with proponents to reduce those delays. Part of that is through our operational statements that describe ways of doing certain types of activity that will not create a situation where a proponent has to come to us for an authorization. We also work very closely with proponents so that those small minor projects would not have to require a full-blown environmental assessment in that way.

• (1205)

Mr. Bev Shipley: Thank you.

The Chair: Thank you, Mr. Shipley.

Mr. Zed has generously donated his time to Mr. Volpe.

Hon. Joseph Volpe: That's the thing about our party: they are so altruistic that they are always looking to help other members along.

Ms. Flood, I wonder if I can pick up on your response a moment ago.

DFO is everywhere. And as Mr. Shipley said, while we're talking about the navigable waters and trying to make some improvements so that the process can be accelerated without compromising the intent of the legislation or projects, it would appear that notwithstanding our efforts to focus on navigable waters, we end up at your door. While that may have its own merits, I want to go back to something from last week. I would like us to walk away from here with some kind of assurance that we're not committing bad policy by proceeding along the lines of helping to streamline the process.

I'll use a specific example. Did DFO do an environmental assessment before the permits were given to Enwave to suck water out of the bottom of Lake Ontario in order to provide air conditioning for the about 50-block area of downtown Toronto about four years ago?

Mrs. Ginny Flood: I would have to check on that, because I would not have that detail. I will have to get back to you.

Hon. Joseph Volpe: I'm surprised, though, Ms. Flood, because that's a pretty significant project. And last week we heard the Waterkeeper witness express concerns on behalf of the environmental community, of which I think you are the major player—no offence, Mr. Leboeuf—that a project like that would not have gone through the kind of scrutiny that DFO would put some of the private property owners through in Mr. Shipley's riding for the purposes of a small construction project.

That surprises me, because the Waterkeeper witness said that she and the organization are concerned about the quality of water as well as the navigability of waters. I hope I'm not misinterpreting what she said, but I think colleagues heard more or less the same thing.

So if it wasn't that pipe that caused some concern, I'm wondering whether the pipe that's sucking the water out of Lake Erie and Lake Superior to feed the Ogallala reservoir is something you would have been engaged in.

Mrs. Ginny Flood: I really don't have the details. I apologize, but our regional offices, if they were here, would probably be able to respond to that directly. I do apologize for that, but what I would say is if there were any impacts to fish and fish habitat, we would definitely be there. If it's with respect to water quality—

Hon. Joseph Volpe: Ms. Flood, I appreciate that. I appreciate all of those things.

I'm asking these questions not because I want to be argumentative or be a problem for you, but I want to express some of the frustrations that all of us want to overcome because we all want to be environmentally sound in our decisions. We all do.

When we juxtapose a process that seems to retard decisions unnecessarily for an outcome that's going to be the same, and the main problem is not, as was asked by another colleague, the lack of staff, but might actually be the lack of coordination.... I've heard the three colleagues from Infrastructure Canada and Transport Canada say "We can't be the coordinating body unless these two triggers bring us in", but it doesn't matter whether they are triggered in or not. Either Mr. Leboeuf or you are part of the action, one way or the other, it would appear to me.

But in major projects, like the two I gave you as an example...or a third one, with all the logs that are clogging up the rivers and streams in my province in northern Ontario, the fish habitat has been affected, whether you choose to recognize that or not. Nobody is talking about cleaning up those streams or those rivers. That will affect habitat and water quality. But in Mr. Shipley's riding, because some farmer wants to establish a more solid footing for the bridge he needs to go from one side of his farm to another.

Ms. Flood, I want to talk to the guys from Infrastructure Canada, because they seem to be pretty reasonable, but I have to constantly talk to you. And you're a reasonable person too, but you're pointing

out that the Fisheries Act is extremely important. It applies to the farms in southern Ontario in the same way it efficiently applied to the Grand Banks and the raping of the cod and turbot in that area. You have to help me through this, Ms. Flood.

• (1210)

Mrs. Ginny Flood: I know we've received a lot of criticism over a number of years, and we've certainly made a lot of efforts to move forward in really streamlining our approval processes, figuring out when we need to be there.

In our department right now, what we have done over the last three to four years is basically set up identification of what are those high-risk types of projects, what are those habitats that we have to be really concerned about and look at from a very strategic environmental assessment. I don't mean strategic environmental assessment the same way that Yves talks about it.

And the other projects that are considered kind of medium to low risk we deal with in a very different manner. We try to apply our tools we've developed, such as our operational statements, so that we're not going into lengthy approval processes and lengthy environmental assessments.

I think environmental assessments in general, though.... There are a number of categories, and certainly some of them can be done very quickly and without much delay on any project.

Hon. Joseph Volpe: Mrs. Flood, I leave you with that. I thank you for being patient with me while I express myself in less than eloquent language.

If this committee accepts the amendments that are being proposed and discussed, I wonder if you will be supportive of both the intent and the amendments as they are accepted, so your department will not undo some of the actions we hope are going to be put into place.

Mrs. Ginny Flood: Certainly our intent is to work within the Navigable Waters Protection Act, but we would still be tied by law through the Environmental Assessment Act and the Fisheries Act. So our intent is to always ensure that we don't impede competitiveness and cause undue delays.

Hon. Joseph Volpe: You've done the assessment already and you think these are okay. There are things you can live with on the surface; at least you can live with the amendments that are being discussed. Transport Canada or Infrastructure Canada say they will meet whatever standards DFO might put in place or has in place.

Mrs. Ginny Flood: I don't want to leave the impression that because of the changes to the Navigable Waters Protection Act, DFO does not do environmental assessments. If there are impacts and there is a project that will have an impact, by law we have to be there, unless we do something to change the Canadian Environmental Assessment Act or the Fisheries Act.

Hon. Joseph Volpe: Okay, let's deal with that issue at another time. But meanwhile, if we streamline a process, are we doing that in reality, or are we simply displacing Transport Canada and Infrastructure Canada for DFO and Environment? I don't know whether we're taking away with the left and putting in with the right. That's all I want to know.

•(1215)

Mrs. Ginny Flood: I don't see it as much of a change for DFO. Where we were working with Transport Canada before, if it's a project that requires Fisheries Act authorizations, we will still be there. I don't think changing the Navigable Waters Protection Act changes things for us.

The Chair: Mr. Osbaldeston.

Mr. David Osbaldeston: Removing Navigable Waters Protection Act review for something that has no navigational impact—and those requirements that are a process unto themselves for their proponent—will take a piece of the jigsaw puzzle away from the box that the proponent needs to put together in order to get the full picture, which is ultimately his project in place. That in itself will streamline the process.

The Chair: Mr. Jean.

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

Thank you, witnesses.

My first question is on the Windsor—Essex—Detroit corridor project. Obviously it's a big project for Canada, and the effects for the U.S. are going to be huge too. My understanding is that somewhere in the neighbourhood of 25,000 jobs over seven years will be created to produce this tunnel and start it—around \$2.5 billion into the local economy.

Is there anything being proposed or that could have been done differently to speed up the process we find ourselves in today, such as having in place some of these changes under the Navigable Waters Protection Act? Would any changes have sped up this process?

As you know, there was a tremendous amount of talk by the previous government about getting this done—and indeed by our government. Now governments are moving forward with it. But are there any changes that would have sped up this process and helped Canada's productivity overall as a result? I'm leaving that totally open. It's not a big question, is it?

The Chair: Feel free to jump in.

Mr. David Osbaldeston: From a Transport Canada perspective, it's a major project we would have undertaken even with these amendment proposals we have in front of you. I'm not familiar with the specific file and details, but I can envision exactly the same process with these amendments as it would have undergone then. It is indeed a major project structure going across a major waterway, which would necessarily generate careful review from a navigational aspect. So we would trigger...as we trigger today.

Mr. Brian Jean: Absolutely.

So you see that even with these changes in the Navigable Waters Protection Act, there wouldn't probably have been any faster way to get to where we are today, then?

Mr. David Osbaldeston: That is correct, other than that we foreseeably would have been able to free up additional resources to be able to respond to that file more quickly, because they weren't involved in culverts going across farmers' fields, etc.

Mr. Brian Jean: Indeed, then, most of the proposals we're suggesting or that have been suggested by departments or by provincial government are for the smaller projects, except to relieve some of the components in the departments themselves. So what we're really looking at with the Navigable Waters Protection Act changes is for smaller projects. Is that fair to say?

Mr. David Osbaldeston: The greatest relief that these provide is to free us from smaller projects with no navigational impact in order to allow those resources to respond in a more timely manner to the larger project needs of our clients.

Mr. Brian Jean: All right. But to be fair, is there anywhere in this that we are proposing to reduce any navigation by Canadians—for instance, for canoeists, etc.? Have you heard anybody here today or anybody prior to this in dealing with the Navigable Waters Protection Act say that we want to reduce navigation in Canada? Is that the case?

•(1220)

Mr. David Osbaldeston: No, absolutely not. Our mandate stays the same, and that is to protect the public right of navigation.

The Chair: Ms. Scharf, I think you wanted to comment on the infrastructure.

Ms. Shirley Anne Scharf: I'd like to respond to a couple of your points.

With respect to the question of whether this will just impact on small or large projects, from our point of view—Keith had run the data and we presented this the last time—about 20% of our MRIF, our Municipal Rural Infrastructure Fund, our smaller community projects, are affected by this, but about 25% of what were the big strategic projects are affected.

If we're doing a big waste water treatment plant and the effluent pipes are discharging and they're a certain diameter—or not—then we are affected by the navigable waters legislation. Just to press this point to one further aspect, though, if there are deleterious substances going into receiving streams, under the Fisheries Act we'd still be checking that.

With respect to your question about canoeists and whitewater enthusiasts, because Transport Canada was administering the act, they have led any consultations that have occurred. We haven't been in direct contact with them from that standpoint.

I was struck by something that I almost find in common among Madam Tully and Mr. Middleton and the FCM, and that is looking for some kind of operational definition of a major waterway, a navigable waterway, and a minor waterway. The point of adding clarity to that on an operational basis is that, from the standpoint of our clients—municipalities, provincial promoters, the private sector—having that information would be extremely valuable.

If I might go one further step, when applications come in to us, if there were some sort of mapping, as Mr. Middleton described with the Albertan experience, that would be very helpful.

Mr. Brian Jean: Great.

To clarify, though, as far as any of the witnesses are aware today, there are no movements or initiatives by anyone to reduce the ability to navigate in any waters in Canada. Just to confirm that, there is no movement to eliminate the ability to navigate waters.

Is that fair to say, Ms. Scharf?

Ms. Shirley Anne Scharf: That is correct.

Mr. Brian Jean: Indeed, I would go further with my questioning: is there any movement at all to require less environmental assessment or environmental integrity stemming from these changes?

Ms. Shirley Anne Scharf: From our point of view, there is not. We still have our obligations under the law.

Mr. Brian Jean: I was going to ask a question about northern Alberta, Fort McMurray, the Athabaska River, and a bridge that needs to go over it, and I'm going to ask that question very briefly.

We've had two bridges go across the Athabaska River for years and years, about 40 years in total. Now we need another bridge, because we have line-ups of three to four hours to get across a bridge. There has been a proposal for a five- or six-lane bridge to go across to replace an existing bridge.

My question is do we have to go through exactly the same amount of assessment to replace a bridge that has out-used its liveable life? Is that totally necessary, from the department's point of view?

Ms. Shirley Anne Scharf: I'm also going to let Keith answer this.

If the environmental impacts when it originally had been assessed haven't changed, if spawning habits or whatever haven't changed, if the repairs are sort of exactly in the same areas—it's still in kind of serviceable areas—it probably would not require a major difference. But if any of those factors have changed, yes, we'd be thrown into a lot of detail, and we're still obligated under the law to do the full environmental assessment.

Keith is more knowledgeable about doing the screenings.

Mr. Keith Grady: That replacement would require a screening under CEAA if we were providing funding for it or considering it for funding. We would have to address all of the factors that CEAA requires that we address as part of the assessment, including implications for fisheries, riparian habitat, erosion, sedimentation, and so on. So it would go through that kind of an assessment process.

If you've got an existing bridge, we would probably have a lot of existing information, so it may be simpler in that respect, but it would require a screening level of assessment.

Mr. Brian Jean: So it's very rigorous, and it's going to continue to be rigorous, no matter what the changes are that are being proposed by this committee, in essence?

Mr. Keith Grady: Exactly.

Mr. David Osbaldeston: If I may, Mr. Jean, if you're nestling that under the current system, it's the same process. Under the proposed amendments—if it's no longer a named work and would necessarily have to trigger a 5.(1)—if it's determined that the replacement bridge poses absolutely no incremental diminishment to the current navigation going under the existing bridge, we would not trigger

that environmental assessment under navigable waters protection. We would be provided, by the removal of that named-works clause, with the discretion—based on our officer's knowledge of the area and the navigational traffic in the area—to determine that there was no additional impact to navigation, and we would not trigger it and therefore not have to add that piece to the puzzle box.

• (1225)

Mr. Brian Jean: Thank you.

The Chair: Thank you.

We're just going to go around the table one more time for two minutes each.

Monsieur Carrier, I know you have a question.

Mr. Masse, you'll be next.

[*Translation*]

Mr. Robert Carrier: I'd like to give Mrs. Flood the opportunity to answer my question; she wanted to do so earlier.

Mrs. Ginny Flood: As I see it, there are two parts to the Highway 25 project. For the first part, on the south side, the company has already received authorization. For the second part, a compensation plan had to be developed. We're reviewing that plan. Authorization will probably be given later.

Mr. Robert Carrier: I understand that this is a specific case. Perhaps we could meet afterward so that you can give me an explanation of the mail I received on the subject.

I have another question. Mr. Grégoire sent us a letter on April 28, discussing the exemptions already applied to minor navigable waterways. He provides a certain description of them. This boils down to the fact that a waterway cannot be used for proper navigation in various cases. It seems that this is an exception, and he hopes that it will be entrenched in an act that clarifies it precisely.

In cases where there is already an exemption or where no one can navigate on the waterway, does anyone verify the effect of that ban with Fisheries and Oceans Canada? A navigation ban could have an impact on the run of certain species of fish. Is that automatically checked by Fisheries and Oceans Canada? Is it Transport Canada instead that receives the work installation request and asks Fisheries and Oceans to check that aspect?

Ms. Shirley Anne Scharf: If I've correctly understood, you're asking me whether, when we receive a request, we have to establish whether Fisheries and Oceans' approval must be obtained.

Mr. Robert Carrier: Yes.

Ms. Shirley Anne Scharf: It's Keith or other individuals in the region who enforce the act who are responsible for that. If the project requires it, we have an approval, but I'm not sure about that.

Mr. Robert Carrier: You currently apply the exemptions yourselves. You ensure that there are no obstacles to navigation, but you nevertheless check with Fisheries and Oceans to see if it objects to a project.

If minor waterways were excluded from your approval under an act, would that prevent any checking by the departments?

Ms. Shirley Anne Scharf: Keith could answer that.

[English]

Mr. Keith Grady: We will continue to have an obligation to assess every project we consider for funding unless it is defined as an exclusion under CEAA, the exclusion list regulations. The minor works provisions being proposed under the NWPA are not part of the exclusion list regulations.

What we will be able to do in the case that you've given is take the information Transport Canada has developed for that type of minor work and the design criteria they've identified as being appropriate to that type of project, and if the proponent meets those design criteria, the project would not be environmentally problematic from a navigational point of view. We will build those design criteria into our EA approval. That will deal with the navigational considerations. We will still need to carry out our assessment with respect to potential impacts on fish or other environmental factors as the act requires.

• (1230)

[Translation]

Mr. Robert Carrier: In the case of private bills not funded by the government, if they concern a minor waterway, will you nevertheless submit the project to Fisheries and Oceans, or will no checks be done?

Ms. Shirley Anne Scharf: I'm going to ask the others to answer that question because I don't enforce private bills. I think that's another approval—

[English]

Mr. David Osbaldeston: Whenever any project goes in or around water the proponent must comply with a number of legal requirements. In this particular case, because it is determined to be a minor waterway, the Navigable Waters Protection Act would not apply. It would not forgo the proponent's lawful requirement to make application and have consideration done under the Fisheries Act with respect to potential fishery habitat limitations and constraints as well as other provincial and municipal reviews conducted for an environmental purpose.

[Translation]

Mr. Robert Carrier: In that case, does it know that it must request authorization from the Department of Transport and the Department of Fisheries and Oceans, or does it make one request in one place only?

[English]

Mr. David Osbaldeston: I would like to say they can do that in one place only, but as a bureaucrat I could never assure that. It is up to the proponent. Much as when building a house, the onus is on the proponent to find out all the permits and other requirements needed to complete the job and have it inspected and approved.

[Translation]

Mr. Robert Carrier: It's really a grey area that must be taken into consideration in the assessment of—

Mr. Yves Leboeuf: That's one of the areas where our agency will play a coordination role with the various departments in different regions, particularly Quebec, where a lot of coordination work has been done between the various federal departments and agencies under our agency's leadership. That now enables proponents to

contact our agency directly, where there is doubt, and to obtain assistance and more information on the various federal departments that may be interested in the project. In a case such as this one, we'll act as a single window, to a certain degree.

[English]

The Chair: Thank you very much to our guests today. We appreciate your comments. I know that we have a lot of review ahead of us. Thank you again for attending. We appreciate your time.

For the members of the committee, while our guests are leaving I just want to advise you that your reports and comments are asked to be turned in to Maxime by the end of today. We are anxious to have some form of discussion on Thursday. If we have the materials, I hope we would be able to do that.

The last piece of business is a motion that was brought forward by Mr. Volpe. I know there was some discussion around the committee the other day as to whether the parliamentary secretary, Mr. Jean, had a satisfactory answer to Mr. Volpe's question. If it is satisfactory then we can move forward. If it isn't, we would deal with Mr. Volpe's motion.

Mr. Jean.

Mr. Brian Jean: I feel a little pressure now, Mr. Chair. I can't imagine that my answer wouldn't be satisfactory, but certainly Mr. Volpe would be the judge of that.

I want to let him know and the committee know that, first of all, ongoing informal consultations will be completed some time by the end of August. They have been ongoing for a period of time now with Air Canada, WestJet, and ATAC. The airline industry has met with the minister's office and it's ongoing. At this stage, that is the situation.

Mr. Volpe does know some of the complications in relation to this, and quite frankly the four issues we're dealing with in implementing this legislation. But if that's not enough, I have no difficulty with him asking for a letter from the minister indicating whatever he wants to indicate.

I do understand the minister has given a date on which he is available to go over estimates, but there's no harm in asking for a letter at this stage anyway, whether you find my answer satisfactory or not.

• (1235)

The Chair: Mr. Volpe.

Hon. Joseph Volpe: First, let me thank the parliamentary secretary for endeavouring to get the information. I appreciate that the consultations are taking place with the airline industry and their representatives. That's fine. But the items in the legislation really deal with the jurisdictional issues associated with provinces coming onside with the federal legislation as passed in the House.

Unless I missed something, I didn't hear what the stage of consultation was between the federal authority and the provincial authorities in order to make the legislation harmonious in all jurisdictions so that we could get from the airline industry the kind of pricing identification that the consumer constituency wants. Does the parliamentary secretary have an answer to that?

The Chair: Mr. Jean.

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

Certainly, Mr. Volpe, you've hit upon the very crux of the issue. At this stage, this government has been very clear that we're not going to interfere in provincial jurisdiction and we would have to reach an agreement with the provinces in regulating newspapers and advertising within their travel agencies. Indeed, the federal government at this stage can regulate radio and TV ads, as well as airlines generally, but it will take the cooperation of the different provinces.

The one topic you continue to ignore, Mr. Volpe, and I continue to bring up is the issue of web-based advertising and making sure there's a clear and even playing field for the parties that are involved. Web-based advertising, of course, is under the jurisdiction of the country the web server is actually based in. So we have three different levels, and of course it will be impossible to regulate the web base.

Quite frankly, Mr. Volpe, it sounds as though you have more issues than just whether the consultations are ongoing. I would suggest that you just ask for a letter from the minister with the specific things that you want to know.

Hon. Joseph Volpe: On this comment you just made, I don't ignore what you've said. I've actually been quite patient and I've been appreciative of what you've done. But for us, I think, and for me in particular, notwithstanding the complexities leading up to a harmonization of policies across the nation, it's important to know that the consultation process has started; what place it's at; and if there are some obstacles on which it is unreasonable for us to expect satisfaction over the course of the next little while, we would take that into consideration.

But we can't solve a problem, real or imagined, if the minister is not engaged in consultations with the jurisdictions and the relationship that causes that problem. So I think I'm aware of some of the difficulties, but the biggest difficulty is taking that first step, and I didn't hear that the first step was taken.

Mr. Brian Jean: If I may clarify, Mr. Chair—

The Chair: Very briefly, and then I'm going to Mr. Masse.

Mr. Brian Jean: First, the consultations have started with the airline industry, for sure. I'm not sure about the provinces. My understanding from previous discussions is that it had been done and it is ongoing. But it's at the end of the consultation process or very close to that. It's going to be winding up by the end of August.

You know the difficulties already, Mr. Volpe, and quite frankly, from my perspective, I don't know how those difficulties are going to be overcome to allow for a clear and even playing field for all the participants. I don't know how it's going to be done, so somebody with a higher pay grade than mine is going to have to come up with the solution.

Hon. Joseph Volpe: The person with the higher pay grade is coming here, I gather.

Mr. Brian Jean: Yes, he is.

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

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

Hence we have the problems with this bill, Bill C-11, with regard to protecting consumers. They have been well flagged. We've heard the parliamentary secretary on the status. The status is as simple as this: they're going to meet again informally. "Informally" is the key word here. I don't know the extent of where that work goes. The substance of the motion is really in the word "extent".

We have the minister coming before committee for estimates, so I guess these questions can be asked of the minister then. But we have to decide whether we're going to pass this motion or not. Unfortunately, there probably won't be time before the minister comes to committee and prior to the break for the summer. I know that the real substance of this is very weak in the sense that we really can't compel, unless we want to stay for a special session. We can do that. We can have that as an option. But we're going to have to find another window of opportunity if we sincerely want to have the minister here on this particular file before the summer break. So we need to hash that out and decide.

● (1240)

The Chair: Go ahead, Mr. Volpe.

Hon. Joseph Volpe: Mr. Masse is right to point out that the minister is coming here, as we've heard. I guess it is next week. He's coming here for the estimates.

The Chair: Just a second.

Hon. Joseph Volpe: As an interim measure, and I'm sure Mr. Masse would agree, I will accept a written statement from the minister giving us an indication of the extent of the consultations. But I want them to focus on the jurisdictions rather than on the airline industry. I accept that the airline industry's consultation is going to be ended by the end of August, but I'm interested in knowing where we are with the provinces.

Also, if the minister has already agreed to come and appear before this committee on the estimates, then I'm going to address those issues then. I'm not necessarily putting the minister on notice. But we're not going to be able to get him here, under this motion, before the House recesses.

I'd like to have that response in writing by next Tuesday. Is he going to have it by Tuesday?

Mr. Brian Jean: I can't even get a letter typed by Tuesday, but I'll ask.

Hon. Joseph Volpe: I'll have my staff work on that.

Mr. Brian Jean: Maybe they could type it up, and he can sign it.

Hon. Joseph Volpe: Just give us the substance, and then you can sign it.

Mr. Brian Jean: Thank you, I appreciate that.

The Chair: Just so I understand, then, we're going to ask the minister to give us an update in writing by Tuesday—

Mr. Brian Jean: Is it the will of the committee?

The Chair: —and we'll sit on this motion for that time.

Mr. Volpe, do you agree with that?

Hon. Joseph Volpe: We're in agreement.

The Chair: Does everyone agree with that, then? Okay.

I want you to know, for Thursday's business—and I won't single people out—that we have only one presentation from a political party with regard to navigable waters. If you have any suggestions or amendments or changes to what we've been discussing, we need that in writing to the clerk. I would really hope it would be by the end of today, if possible, so we have something to discuss on Thursday.

Mr. Masse.

Mr. Brian Masse: I have a suggestion. Perhaps as the researchers are pulling this together, in terms of the presentation style, it would be helpful to have a tool that would display a change or an amendment and how each department would be altered by it, whether it is process or whether they suggest how they would be able to reduce staff time. It would be something that would really flesh out how each change might alter each different department.

The Chair: I would certainly ask John to do that. I think it's going to be very difficult to qualify what the implications would be. I'm not

sure they would comment on a hypothetical. All we're going to do is make a recommendation to them.

Mr. Brian Masse: For something like minor works, could we not have something like that analyzed in terms of each department and what they think might change with that definition? Is that too difficult?

The Chair: I certainly could ask them. I don't know if we could have that by Thursday.

Mr. Brian Masse: That's fine.

The Chair: So on Thursday, come prepared to discuss the amendments you've submitted to Maxime and me, and we'll have an open and fulsome discussion.

Thank you.

The meeting is adjourned.

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

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

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.