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## Tuesday, February 26, 2013

## Chair

**Mr. Larry Miller**

# Standing Committee on Transport, Infrastructure and Communities

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● (1530)

[*English*]

**The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)):** We'll call our meeting to order.

I want to thank all of our witnesses for being here today and remind the committee and our witnesses that we have votes today. They shouldn't affect the length of our meeting, but I want to get started on time anyway.

With no further ado, I'm going to turn it over to our first speaker, Mr. Ballantyne, from the Coalition of Rail Shippers.

Take 10 minutes or less, please.

**Mr. Robert Ballantyne (Chairman, Coalition of Rail Shippers):** Thank you very much. I will share some of my time with Wade Sobkowich. We're certainly pleased to have the opportunity to bring the shipper perspective on Bill C-52 to this committee.

The 16 member associations of the CRS account for a substantial portion of the rail freight customer base, and the member companies in those associations are estimated to provide more than 80% of the Canadian revenues of CN and CP.

All 16 CRS member associations support the six proposed adjustments to Bill C-52 that we bring to the committee.

Bill C-52 is the government's response to the longstanding service problems that were identified and quantified by the independent rail freight service review panel and its consultants. The NRG Research Group, in its independent survey, found that only 17% of respondents rated their satisfaction with railway service at a 6 or a 7, based on a scale of 1 to 7 in which 7 meant “very satisfied”. They also reported that 62% of shippers reported that they had suffered financial consequences as a result of poor performance.

The fundamental underlying problem is one of market dominance. The rail freight market is not a normally functioning competitive market; it is dominated by the sellers. The rail freight service review recognized this, with the panel stating the following on page 41 of its final report:

> This railway market power results in an imbalance in the commercial relationships between the railways and other stakeholders.

In his testimony before this committee on February 12, Minister Lebel referenced the above conclusion and stated:

> It is essential for the committee to understand why this legislation is necessary. We are not dealing with the normal free market. The reality is that many shippers have limited choices when it comes to shipping their products. It is therefore necessary to use the law to give shippers more leverage to negotiate service agreements with the railways.

The behaviour of monopoly businesses has been well understood since the 19th century, and many of the lessons learned were from the behaviour of 19th-century railways. Canadian law has acknowledged this dominance for over a hundred years.

In this connection, the abuse of dominance provisions of the Competition Act—that is, sections 78 and 79 of that act—are certainly of interest.

The Competition Bureau's guidelines—and I stress that they don't govern the railway industry, but they're certainly instructive—or the bureau's general approach in evaluating allegations of abuse of dominance is as follows:

> A market share of less than 35 percent will generally not give rise to concerns of market power or dominance.

> A market share of 35 percent or more will generally prompt further examination.

> In the case of a group of firms alleged to be jointly dominant, a combined market share equal to or exceeding 60 percent will generally prompt further examination.

In the case of the rail freight market, CN and CP together control 97% of the market by revenue. The issue of competition from other modes is a factor often raised. While in some instances there may be truck and marine competitive options, the reality is that moving to other modes in most cases is not practical, in any reasonable scenario.

There has been discussion that "commercial solutions are the preferred solutions", by government and other stakeholders. Throughout the service review and the follow-on initiatives, the shippers have stated a preference for solutions that would be "commercial", but a necessary prerequisite is that there be a normally functioning competitive market in which there is a reasonable balance between the buyers and sellers. Wherever there is no such balance, the only recourse for the disadvantaged parties is to look for a legislative framework that acts as a surrogate for normal competition.

The minister and his staff have outlined to you the structure and provisions of Bill C-52, which are designed to influence the behaviour of railways in a manner that would be comparable to there being effective competition. The CRS has noted that Bill C-52 in its operation will break new ground, with little relevant jurisprudence or experience available to the agency or arbitrators. The CRS believes the bill can be strengthened in a way that will minimize uncertainty, give more explicit guidance to arbitrators, and limit the opportunity for railways to mount legal challenges designed to either frustrate the intent of Parliament, delay decisions, and lead shippers both large and small into expensive legal battles.

● (1535)

The CRS has six recommendations, which I will very briefly introduce. These have been given to the committee and will be discussed by my colleagues in more detail. They are as follows:

The first one is to spell out that the service obligation is intended to meet the needs of the shipper, and then name the specific obligations.

The second one is to allow the arbitrator to rule on the whole contract between parties and not just the operational parts; that is, service is somewhat differentiated from just the operational parts.

The third is to make clear that dispute resolution terms, including damages, may be included in a contract by an arbitrator in order to reduce subsequent costs and delay in dealing with problems.

Number four is to remove a loophole whereby the railway can impose an unspecified charge against a single shipper without recourse.

Number five is to make clear that the shipper can decide which issues will be arbitrated.

Sixth is to remove undue precedence given to the railways' network obligations over and above the service obligations to the shipper.

With that, I would like to turn over the rest of my time to my colleague, Mr. Sobkowich.

**The Chair:** You have just a little less than four minutes.

**Mr. Wade Sobkowich (Representative, Coalition of Rail Shippers, and Executive Director, Western Grain Elevator Association):** We're thankful to the government for making rail service a top priority on its legislative agenda. The entire shipping community has been through a multitude of processes leading up to Bill C-52, which started in 2006 and which, we hope, will finally result in the necessary backstop for balanced accountability.

In order to ensure that it does not render the legislation ineffectual for or detrimental to shippers, Bill C-52 requires six sets of amendments. We cannot overstate the importance of all six. I should add that they complete the modernization required to ensure that the service pie grows in size rather than it only being divided differently. Without all of them it's possible that rather than facilitating the predicted growth in our economy, the bill might have the unintended effect of potentially constraining that growth.

Others will speak to items 1, 2, 4, 5, and 6, although l'd be pleased to respond to any questions. l'm choosing to focus my comments on item number 3 from the CRS package that I believe everybody has. It's about the need for an expedient mechanism for a shipper to be awarded liquidated damages for service failures.

This particular amendment speaks to a void in the draft version of Bill C-52 that affects smaller shippers. My perspective is that of a grain shipper. I'm a member of the CRS, but I'm with the Western Grain Elevator Association. In this regard, we speak about all grain elevators as smaller shippers since each elevator location essentially acts as a small location shipper. The best way to illustrate the problem we're trying to rectify with amendment number 3 is with an example. So here it goes in two minutes.

Typically, the time allotted for loading a unit train of grain is 24 hours. If we fail to perform, the consequences are set out in a railway tariff. We don't object to this discipline. For example, if a grain shipper is anticipating the arrival of a unit train at an elevator location on a Tuesday, normally the elevator will shut off receiving from farmers when they are loading so they can dedicate staff to loading the train. Twenty-four hours means that with about a hundred cars, it takes about 14 minutes per car to load, so the company has to be very efficient.

When the train doesn't arrive on the day the railway says it's supposed to, we're faced with added costs of labour and overtime costs on a weekend. And if the train doesn't show up on a weekend, now we've paid time and a half. Inbound loads from farmers have to be rescheduled, which causes significant problems at the farm level, and there's a danger of congesting deliveries. If the train doesn't show up for three days, now we've shut that elevator down for three days. In some cases the elevator is full and can't accept any more deliveries. When cars don't show up, those farmers have to be turned away, and that disrupts the system.

When the train moves to a terminal elevator later than expected, it is very likely that it will arrive on top of other shipments. Rail car bunching occurs, which leads to longer unloading times, exposing companies to railcar demurrage. If terminals are waiting for those cars, they are exposed to vessel demurrage, which is extremely expensive. Or perhaps the vessel has sailed, and now the terminal has to sit on this inventory. It would not be unreasonable to assume that the added costs to the shipper in this example could be $50,000. Under Bill C-52 the railways are not required to compensate shippers for any portion of these losses, and this gap is what we're trying to address to the best of our abilities to make sure that this legislation fulfills its intentions.

We propose a modification to 169.31(1)(b) to allow the shipper, at its option, to submit to the agency for arbitration terms governing whether or not a service failure has occurred and the manner in which damages are to be assessed and paid to the shipper for losses resulting from such a failure.The practical use of a service level agreement is severely limited if obtaining a remedy resulting from a breach requires the shipper to commence proceedings before the agency and/or court, or to rely on the proposed AMPs system. It's not practical for shippers to always undertake costly and lengthy agency and/or court proceedings.

Allowing dispute resolution mechanisms to be included in an arbitrated SLA will enhance railway responsiveness to service problems that arise once an SLA is established. The concept of balanced accountability between shippers and rail carriers can be achieved if mechanisms for compensation to shippers for railway failures can be determined in a simple and expedient fashion.

● (1540)

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

We'll now move to the Forest Products Association of Canada.

Ms. Cobden.

**Ms. Catherine Cobden (Executive Vice-President, Forest Products Association of Canada):** Thank you very much. I'm happy to be here.

I very much appreciate the committee's efforts to review this bill. As Bob Ballantyne has already stated, we, as shippers, remain united in the need for this legislation. I'm here today representing forest product shippers from coast to coast. My remarks will not be association-speak, but will actually be direct feedback from the shippers we represent.

I would like to point out that with me today is a shipper, Mr. Brian Mcgurk. He is with Resolute Forest Products. He leads their shipping from coast to coast and also happens to be the chair of the Forest Products Association's transportation committee.

We also have with us, Allan Foran, from Aikins, MacAulay & Thorvaldson. He is our legal counsel, and I offer his assistance to you if there are any legal points of clarification that you might benefit from.

On behalf of the members of the Forest Products Association of Canada, our 230,000 employees, and the 200 rural communities we represent, I would like to thank the government for the work it has done to date to prepare Bill C-52. This bill does move us forward and will give us more leverage on the day it is passed than what we currently have. We do have a few simple suggestions that are of critical importance for improving the practicality of the bill and to assure that the regulatory burden is minimized.

Before I get into those specifics, I will share with you some insights on how forest product shippers experience the world to help you appreciate why this is such a critical area to get right. FPAC member companies represent a significant slice of the rural economy. We also represent a significant slice of the railways business. We estimate that to be about 20%. While we are rurally based in our manufacturing, we serve a very wide global marketplace. Over 85% of our products from these small northern towns are shipped all over the world and into a demanding global marketplace. Whether we're shipping to China, Europe, or the U.S., we require timely, predictable, and cost-effective transportation systems to meet the needs of these discerning global customers.

I would also say that we believe in a free market economy. However, it is unfortunate that we routinely experience the challenge of living with a key component of our business, the railway transportation system, that is not free market-based. Indeed, addressing the imbalance of market power that the railways currently enjoy remains the final frontier—if you're a Trekkie—of opening up Canada to the world economy.

It is with this backdrop that FPAC applauds the intent of Bill C-52. You have taken action to enhance the effectiveness, efficiency, and reliability of rail freight supply to address the current imbalance we face in the rail system.

Minister Lebel's testimony on February 12th went further in outlining the critical intent, when he urged this committee to understand why this legislation is vital. My colleague Bob Ballantyne has already read the quote, and I'll just borrow from the very beginning of it, where Minister Lebel said, “We are not dealing with the normal free market”.

FPAC member companies fully agree with the intent of creating the conditions to allow for successful commercial relations. Obviously, that's what we agree with, and this would normally be possible in a free market condition. Ideally, we'll never have to use this legislation.

I want to point out that our bona fides on this point is very strong. In fact, we had tried to broker our own commercial deal with one of the railways on this very topic prior to this regulatory endeavour, and we failed miserably. Having led the exercise on behalf of FPAC member companies, I can say from personal experience that the shipper community does not have any other option than a strong piece of legislation being available to us to bring the discussions with the railways into better commercial balance.

Again, we fully support the intent of the bill, and in the spirit of ensuring the objectives of this bill are indeed fulfilled, forest product shippers make three important recommendations for your consideration.

● (1545)

Recommendation number one is that you delete all references to the word “operational”. Simply remove this one word. This will ensure that we do not undermine the objective of rebalancing commercial relations. By referencing operational data, you create the unintended consequences of adding costs, creating an information imbalance, and diminishing the intent and power of the legislation.

Recommendation number two that you delete all references to statutory obligations to other shippers and third parties. Removing this reference will ensure that we don't dilute the arbitration away from the true objective, which is addressing the inadequate service experienced by the shipper.

Recommendation number three is that you insert a new stand-alone section that would define adequate, suitable accommodation and service obligations. This one should be easy. All parties in previous processes, such as the rail freight service review and the Dinning process, were in full agreement as to the elements that defined service obligations. We argue that if this is not clearly spelled out in the legislation, we run the risk of cumbersome legal proceedings defining and eroding the intent and nature of this bill. I happen to put my faith in this committee over the lawyers in this regard.

A detailed description of these three changes has been circulated for all of you. I'm just glossing over them, but hopefully I've given you enough of a description so you can appreciate what they intend.

In conclusion, as Canadian companies aim to secure their place as the preferred supplier to the world, we must have an efficient, reliable, and effective rail system. The committee's undertaking on this legislation is therefore critical.

FPAC members appreciate your attention to these matters. We request your support for these adjustments to ensure that the bill is a workable success. Thank you for your attention.

● (1550)

**The Chair:** Thank you very much, Ms. Cobden.

We'll now move to the Grain Growers of Canada and Richard Phillips.

**Mr. Richard Phillips (Executive Director, Grain Growers of Canada):** I actually have a handout. There's not a lot of text in it, but I'm going to be referring to it as we go through.

First off, I would like to thank Minister Ritz and Minister Lebel for their work in putting this legislation forward. I'd also like to recognize Minister Strahl and Rob Merrifield for the work they did previous to that. I'd also like to thank the opposition members who have taken a keen interest in this bill and reached out to many stakeholders: Ms. Chow, Mr. Allen, Mr. Aubin, and Mr. Goodale.

Farmers are not the direct shippers. We don't actually do this freight stuff ourselves, but everything that goes on, or anything that goes wrong in our grain handling and transportation system, flows back down and affects our bottom lines very directly. So I would like to walk you through very simply what challenges we face and what we're talking about as farmers.

If you could go to the first two pictures, you'll see that they are of grain bins and barns and lots of snow around them. What happens is that we get a call to deliver grain. There's a train coming next week. We need put 5,000 tonnes of number one hard red spring wheat into this elevator to hit the train. That's what happens to the farmer who gets those phone calls. So we say, well, what day is the train going to be there? It's Tuesday. So we go there and start up our tractors and we clean all the snow away. We thaw out our auger engines and we get everything ready to ship grain. So the first two pictures are just of snowbanks and then in the next two pictures you see what it's like to try to move the snow in our yards in many parts of western Canada in the wintertime. Again, this takes a day's work just to get ready to ship the grain.

We do all of that work, and then you will see in picture number five us loading the grain with a grain vac into the truck that we will use to take it to the grain elevator. That's in the wintertime. Sometimes we get calls in the spring or the fall to deliver grain. Here's a photo if you're harvesting and you have you and your spouse or a hired man and you're out combining and delivering grain. Some farmers only have one good grain truck, and if you're using that at harvest time, then you either have to hire a custom trucker to come in to move that grain to the elevator and book that freight to do that, or you have to take the truck off the combine to haul grain to the elevator. Some farmers will have more than enough trucks, and some of the larger scale farmers might be able to do both at the same time, but for many farmers that's not a realistic option.

When you're rushing around on your farm, shown in picture number seven, it never fails that this is what happens when you're rushing and trying to get home to load grain and run the combines at the same time. That's actually what happened to this particular individual. He sent me a photo of it.

The other things that can happen, as you will see on the next page, are when you're busy seeding. Again, a lot of farmers only have one really good truck, and that's the truck you use to bring fertilizer or seed to your air seeder or your drill when planting. Again, if you have to haul grain during seeding time, you either have to stop and use the truck for that or you again have to hire a custom trucker to come in and do all that.

So you've gone through all this work whether you've cleaned snow or arranged for somebody to come in your busy times to haul that grain.

If you go to the next picture, there's a picture of Weyburn Inland Terminal, a big, successful farmer-owned terminal. That's the newer concrete ones. On the next page—page 10—you'll see an elevator at Coronach, Saskatchewan. What happens is that if the train doesn't come, the elevator fills up, and what you see is a big line of trucks forming. So now you're sitting there in the line with your truck and it's a busy time of year and you're saying, well, should I just turn around and go home and unload this truck, or should I wait in line? Is the train coming, or isn't it coming? This is the sort of stuff that can happen. Or you get up really early in the morning and you get in line first only to find out there's no room to unload the trucks.

These are the sorts of things that back right up to the farm gate and cause farmers a lot of consternation when the rail service and the trains aren't there on time.

The next two pictures are photos of elevators with fully loaded cars of grain. That's what we do want to see. The railways do haul a lot of grain for us every year. The challenge is that it's not always on a timely basis. For example, there are spot prices. If Japan is out in the market buying a lot of wheat, for example, and they want to pay a premium price, or Turkey wants to buy lentils at a premium price, there are spot prices to take into account. And if a grain company bids on that, they want to be sure that they can get the rail transportation to get it to the port on time, to get to the boat on time, to get to the customer's mill on time. If there's a risk of penalties from the customer because you didn't get it there in time, or you're going to pay a lot of demurrage at port for a boat to sit there, then all of that comes back into a lower price for the farmer because the grain company doesn't have that much margin. So they will say, well, we'll pay the farmer less money to allow for these probable costs that we'll absorb along the way.

So at the end of the day it all does come back down to the farmer, and we're the ones who suffer when things don't work properly.

Again, thank you very much for the chance to be here and I look forward to the questions and answers.

● (1555)

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

We'll now move to the Western Canadian Shippers' Coalition, and Mr. Ian May.

**Mr. Ian May (Chair, Western Canadian Shippers' Coalition):** Thank you, Chairman Miller.

I, too, am grateful for the opportunity to speak with this group. We're also grateful for the government's efforts in bringing this bill forward.

I want to give you perhaps a different perspective on the bill, because it will be one that comes from a group of shippers that probably makes greater use of the shipper protection mechanisms contained in the act, and I would think probably more than all other associations combined, although this is a guess because a lot of these are confidential. We have had some rather extensive and, in some cases, unfortunate experiences with them.

The WCSC members are bulk commodity shippers for whom rail freight service is one of the most important components of their business. They're typically captive to one railway or the other and collectively spend in excess of $2 billion annually on rail freight, or about $5.5 million a day.

In evaluating the potential of Bill C-52 to correct what Minister Lebel identified to this committee as the imbalance in the relationship between shippers and railways, it's prudent to examine the current regulatory provisions to discover where they fell short in this regard and in order to help assure the success of this new remedy.

To do so, we must look at sections 113 to 116 of the current version of the Canada Transportation Act. I believe they've been distributed to the members. These sections are subtitled "Level of Services". They have been part of the rail legislation for years and set out the service rail freight shippers are entitled to and the service obligations the railways must meet.

For example, paragraph 113(1)(a) says that a railway company shall "furnish...adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway". Paragraph 113(1)(d) says that it shall "furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering the traffic".

While section 113 sets out the service requirements, it is section 116 that demonstrates how seriously Parliament took the delivery of adequate and suitable service. It gives the Canada Transportation Agency real authority, as follows:

> If the agency determines that company is not fulfilling any of its service obligations, the Agency may
>
> (a) order that
>
> (i) specific works be constructed or carried out,
>
> (ii) property be acquired,
>
> (iii) cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Agency, or
>
> (iv) any specified steps, systems or methods be taken or followed by the company;

This is on behalf of the railway. The railway has to do all of this stuff. Those are steps, systems, and methods specified by the agency: considerable authority.

However, the conclusions of the rail freight service review panel have taught us that even legislation as clearly drafted and long-standing as this may not protect against railway market dominance. The question is why, and will the provisions of Bill C-52 as drafted provide a better opportunity for balanced relations and the consequential commercial solutions we all prefer?

In order to make that determination, one must first understand the world in which rail freight shippers operate. Taken as a group, they comprise a significant economic force and are perhaps the critical economic driver of the Canadian economy.

A 2009 study provided by the University of Toronto's Rotman School of Management revealed that just four commodity groups—oilseed and grain farming, coal mining, lumber manufacture, and pulp and paper products manufacturing—outperform our national railways by ratios of 6:1 up to 8:1 in contributions to gross domestic product, wages, jobs, and federal taxes paid.

In short, these shippers are the backbone of the Canadian economy, but without reliable and adequate rail freight service, they cannot hope to achieve their full economic potential.

The operative phrase here is “taken as a group”. Commercial interactions between shippers and railways take place on a one-to-one basis where the collective might of the shipper community is irrelevant. In fact, according to a report produced by Quorum for the rail freight service review, there are just over 5,000 shippers using CN and CP for rail freight service transportation, and 4,239 of them are listed as “small” or “very small” in the report. That is a substantial number of jobs and businesses to put through a process wherein they are significantly overmatched.

Bluntly put, a shipper needs proper rail freight service far more than a railway needs to provide it. Railways use an operating model that subordinates the needs of the customer to those of the carrier and its shareholders. Railways defend their right to do so expertly, vigorously, and relentlessly. Rather than honour the spirit of the law, railways have chosen to honour the letter of the law.

● (1600)

They have dedicated legal experts who, in the event of a service complaint, question everything from jurisdiction to administrative fairness, and failing an acceptable result from the agency, make full use of the Federal Court of Appeal and the Supreme Court of Canada in pursuing a favourable outcome. They are experienced and tenacious even with seemingly unimportant issues because they recognize the value of precedent. They are fully aware that victory in a small proceeding may well establish a principle that could lead to victory when much more is on the line.

For their part, shippers use the complaint process as a last resort. Service level complaints are not part of their core business and their knowledge and expertise usually ends with their own operations. They lack the information to comment on railway operational claims, and the process of acquiring experts to assist in that area is time-consuming and costly. Discussions with the agency reveal a certain level of frustrations over the manner in which shippers typically present their cases compared to the railways. Railways are well-prepared and much better acquainted with the process whereas, for the reasons previously mentioned, shippers, particularly smaller ones, are not. Since agency decisions must be based on the evidence presented, typically such decisions favour railways.

All this is to point out that the railway market dominance does not end with commercial negotiations. It pervades the long-standing service complaint mechanism as well. It's for that reason that we have recommended changes to section 115 of the act.

Here's one of our concerns. The current version ofC-52 provides a new opportunity for railways to avoid providing shippers with the service they require, one not previously seen in rail freight legislation. Proposed paragraph 169.37(d) instructs the arbitrator to “have regard to the railway company's service obligations under section 113 to other shippers”. In effect this gives the railway a get-out-of-jail free card when it comes to providing service, which could have unintended consequences for the growth of the Canadian economy, jobs, and our international trade aspiration.

Let me give you an example. Imagine a branch line with four distinct forest product shippers on it. Let's say we have a wood pellet plant, an OSB plant, a plywood plant, and a sawmill. Service has traditionally been provided by a 120-car train set on a three-times-per-week basis. While 120 cars aren't enough to handle all of the demand within the timeframe that each of the facilities requires, over the course of a year the railway manages by shorting one of its customers one week and another the next and so on. It's not great, but at least it's reliable. Service level complaints have been unsuccessful because all the shippers are being treated equally.

Now something good happens. The sawmill has expanded its international market and doubles its orders. Instead of needing 40 cars it needs 80. This doesn't work for the railway because in order to handle the extra shipments they would have to run two smaller trainsets of 80 cars each. It's still profitable but not as good as the 120 car-set, which maximizes asset utilization.

The railway's response to the request for additional cars is “We can give you 20”, which means that the other three shippers on the line will have to take a reduction. Or, the railways may offer to provide the additional cars but at a cost that significantly exceeds the current rate being paid for the original 40 cars.

This particular section of the proposed bill actually turns the current level of service provisions against improved service for the shipper, which is not exactly the recipe for economic growth that Canadians are expecting.

When the government asked for input on the establishment of rail freight service and rail freight service level agreement legislation, shippers responded that they needed a process that was simple, quick, effect and affordable. In terms of the speed of the process you have heard that it will take 45 days. While the proposed language calls for the arbitrator to render a decision within that time, the process actually begins with the shipper requesting that the railway make an offer to enter into an SLA. From that day the railway has 30 days to respond. When you add 45 days and another 20 days that the arbitrator may ask for, you can be into a three-month process before you know it.

In conclusion, we offer these brief comments on Bill C-52 to help ensure that it will accomplish its intended purpose, that of mitigating railway market dominance. We believe that the six amendments put forward by the coalition of rail shippers will assist in that pursuit. This bill brings to light an important issue for Canadian rail freight shippers and opens the door for further improvements during the 2015 statutory review of the Canada Transportation Act.

Thank you for your attention.

● (1605)

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

We'll now move to Pulse Canada and Greg Cherewyk.

**Mr. Greg Cherewyk (Executive Director, Pulse Canada):** Thank you very much, Mr. Chair.

I appreciate the opportunity to be here today to discuss Bill C-52 and the enhancements that we believe will help this piece of legislation become a tool that contributes to the competitiveness of pulse and special crop shippers, Canadian businesses, and the users of the rail freight system in Canada.

I'm going to refer throughout the course of my discussion here to the six amendments that you have from the CRS, so you might want to keep them handy.

In order to encourage agreements that raise the bar, that allow Canadian businesses that drive our export-dependent economy to maximize their production and their marketing capacity, without having to work through costly legal proceedings, this bill must first provide sufficient clarity, definition, and guidance so that railways and shippers understand the framework within which they're being asked to negotiate agreements. If, and only if, they cannot reach an agreement in the commercial environment, the bill must provide appropriate clarity and guidance to the parties and the arbitrators so that the legislative backstop is quick, fair, and cost-effective.

We've been consistent with our recommendations leading up to the Dinning facilitation process, throughout that process, and indeed throughout the consultation process on Bill C-52, that clarity, definition, and guidance upfront in the legislation would increase the probability of commercial agreements being reached between rail carriers and their customers. While not all of our concerns have been addressed in the current version of this bill, we've also been consistent in saying that we'll remain firm on ends and flexible on means. There's more than one way to get where we're going.

That being said, I want to turn to what we believe must be done to improve the bill, once again with the goal of enhancing competitiveness of Canadian businesses by encouraging improved levels of service, better reliability, and better consistency.

We all recall the emphasis that shippers placed on having the elements of service defined so that shippers and carriers could focus their attention on negotiating the level of service associated with each element. This was a key part of the recommendations of the rail freight service review, and they actually put elements in the final report to the government. On the first day of meetings, the committee asked if this was addressed in Bill C-52. I'll point out where you can find some of these elements and I'll also highlight what needs to be done to complete the picture.

First, let's quickly review the five core elements of an agreement, as stressed by the rail freight service review panel and by shippers throughout the Dinning process, as well as through the consultation process on Bill C-52.

First are the service obligations. To be clear under service obligations, I also include communication protocols as part of a service obligation. Service obligations are the definitions of the services that will be provided.

Second are the performance standards. The standards or commitments associated with each one of those obligations.

Third is performance measurement. The tool that allows you to determine if standards and commitments have actually been met.

Fourth are the consequences. If a party is failing to meet the standards or commitments, some form of consequence shall hold them accountable.

Fifth is dispute resolution. The mechanism that helps determine if there has been a breach and how consequences shall apply.

Under service obligations, currently section 113 of the Canada Transportation Act refers to the railways' obligation to furnish adequate and suitable accommodation for all traffic offered for carriage. During the first committee meeting, it was made clear that the framing of railway obligations in Bill C-52 links back to section 113 and the reference to adequate and suitable accommodation.

Ladies and gentlemen, we have spent the past five years demonstrating that adequate and suitable is not an adequate definition of service obligations. It's time to modernize this act; it's time to bring it into the 21st century and appropriately define the obligations of the railway to make them consistent with modern supply chain operations.

I'm sure you'll agree that the definitions of service obligations provided in our proposed section 115.1 are reasonable. They're reasonable for an agreement between a service provider and its customer in a logistics industry today. Modern supply chains in this age of the Internet are driven by information. The expectations that shippers have for the provision of information about their plans and ongoing operations could not have been conceived of when the current language of the act was first written.

It is imperative that these items are defined so that when a service agreement is considered, it is clear that these are the obligations against which standards and communication protocols will be applied. The addition of 115.1 will provide clarity and guidance, and it's a simple and effective way to encourage more commercial solutions. Finally, it will also address the antiquated language of the act that has everyone wondering how they would ever know if they'd been furnished adequate and suitable accommodation.

● (1610)

With regard to performance standards, the reference to performance standards is found in proposed paragraph 169.31(1)(a). Again, to make this work, to make it effective, it must link back to more than section 113; it must link back to something like section 115.1, which we have proposed. If not, the result will most likely be inadequate and unsuitable.

Turning to performance measurement, it's the tool that's needed to determine if performance has met the performance standard. While it's not referenced directly in the bill, the second key amendment that we've proposed—that is, the removal of the term "operational" from proposed subsection 169.31(1)—will allow parties to include this essential element of an agreement in their SLA.

The term "operational" unnecessarily limits the elements that can be included. The simple amendment we've proposed would broaden the scope of an agreement to include a range of critical service-related elements.

With regard to consequences, once measurement has highlighted a failure, we look for a mechanism to confirm that a breach has occurred and to ensure that an appropriate consequence is in place to hold the offending party accountable—if that is what shippers wish to include in their framing of their SLA request.

The third amendment we've proposed simply gives the shipper the right to choose to include a mechanism that would help determine if a breach has occurred and how damages shall be assessed.

With amendments that would allow for such elements as performance measurement, the sharing of information on performance metrics, and dispute resolution mechanisms, we wouldn't expect a lot of opposition. After all, these are the terms that were routinely offered to shippers by carriers in collaboration agreements; they were key recommendations of the panel; and in the case of dispute resolution mechanisms within an agreement, it was the only type of dispute resolution that the railways considered discussing in the context of the Dinning facilitation process.

The remainder of the amendments we have put forward are critical, and will contribute to a fair and cost-effective arbitration process that is set up to achieve the desired outcomes.

Amendment four is well defined in our submission, and is an obvious gap that needs to be filled. If a railway, immediately following the establishment of an agreement, can apply a tariff or a charge that cannot be challenged, it has the ability to completely subvert the intent of this bill. The arbitrator will have made a decision within a specific context. If we do not amend section 120.1 as outlined in our proposal, a railway, through a limited distribution tariff or other such means, could apply a charge that completely changes the context of that agreement after the fact.

Amendment five in our proposal also addresses a key gap. In the minister's opening remarks to the first committee meeting, he was clear that the intent is to allow the shipper to frame the issues of an agreement under this act. The bill in its current form has a gap that will allow carriers to impose conditions or inject issues that were not raised by the shipper, which is contrary to the stated intent of this bill.

Finally, amendment six stresses that proposed paragraphs 169.37 (1)(d), (e), and (f) must be eliminated. With these provisions, the arbitrator must consider a wide range of issues that are often characterized as network effects. The railways will always raise the issue of impacts on the network, and an arbitrator, quite frankly, has the ability to consider their case. But compelling him or her to consider these impacts unfairly disadvantages a shipper who has virtually no way to dispute these claims, adds expense and complexity to a process that should be quick and cost-effective, and places undue and disproportionate emphasis on the railway's needs.

Railways should not have the sole right to determine what is optimal in the context of service. The objective is not to assist railways in achieving record low operating ratios, it is to maximize the production and marketing capacity of Canadian businesses and thus the Canadian economy.

Achieving that goal may mean that the railways won't always have the most profitable configuration of their network. But then, Canadian economic performance is not synonymous with railway profitability.

Our national transportation policy reminds us of this—in section 5 of the act—when it states that:

> a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada.

Thank you for your time.

● (1615)

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

We'll go right to questioning.

Ms. Chow, seven minutes.

**Ms. Olivia Chow (Trinity—Spadina, NDP):** Thank you for taking the time to come.

Mr. May, I have a very specific question for you. If the six recommendations in front of us do not pass, is Bill C-52 still worthy of support? I don't want to prejudge if it would or wouldn't, but given that we've been down this road for five years now, whether it's the stakeholders' review or the negotiations and mediation, I think every side understands the issues. I don't think there is anything that is not clear, and the recommendations we have in front of us are very specific.

It's all about the balance of power and who has it. Is it the 5,000 shippers, or is it CN and CP?

If these recommendations don't pass and you were a member of Parliament, what would you do?

**Mr. Ian May:** One, I'd fight very hard to get the recommendations passed.

**Ms. Olivia Chow:** Of course, that's a given.

**Mr. Ian May:** Two, the bill is worthy of support because it actually sets down in writing and in testimony the fact that there is an imbalance. Having that on the table is worth a lot to shippers because it means we can come back at this again if we fail this time. As Greg said, we'll come back next time. There's 2015 ahead.

Does that mean we'd be happy about it? No. But we would still support the bill. It's an important premise to have established.

**Ms. Olivia Chow:** That has been what New Democrats have been doing. We supported it at second reading, but we noted that the bill was deeply flawed.

Are these six recommendations in any rank order? Is there one that would be more of a bottom line than others?

**Mr. Wade Sobkowich:** Yes. It ties a bit into the question you asked Ian. We placed them there in the order they appear in the bill. Many of them are inextricably linked to one another.

When we started this process, under a very short timeline, at the Coalition of Rail Shippers we had over 30. We said this wasn't going to work; we needed to pare it down to the minimum we needed to get at the stated objectives of the bill.

I think that if you're looking at removing some of the amendments or not making the amendments now, it really does shift us into a grey area. A number of them get at making sure that the service pie increases in size. If we don't put those measures in place to plug those holes, we don't know if the pie is going to increase in size.

It's going to be divided differently, though. When you ask a group of shippers whether we would be better off to have it or not, it really depends on where you feel you sit in the marketplace and whether you're going to end up with a larger-sized pie or a smaller-sized pie. I think you'll end up with a group of shippers that would say we need these amendments with this bill. You'll end up with another group of shippers that would say, let's take this now and fight hard for the rest of them later. It really puts us into a grey area if we're without these amendments.

**Ms. Olivia Chow:** Mr. Phillips, I really appreciate your photos. They really explain the problem. I've heard it many times, but seeing it all lined up like that and all the work it takes does illustrate the problem.

How much money is routinely lost? It's hard to put a dollar amount on it, but I would imagine that if the grains aren't delivered on time, or people are waiting, or they're waiting at port....

Does the entire shippers' community have a dollar amount? What about the Grain Growers of Canada? How much impact will it have if we continue on the way of complete market imbalance?

● (1620)

**Mr. Richard Phillips:** I think two of us will answer that.

Wade, do you want to go first?

**Mr. Wade Sobkowich:** Sure.

I don't mean to monopolize all the answers.

**Mr. Richard Phillips:** Just go ahead.

**Some hon. members:** Oh, oh!

**Mr. Wade Sobkowich:** Thanks, guys.

For the grain industry, a problem first manifests itself or becomes visible to us when a car isn't spotted. I describe some of the problems in my presentation. When you're facing railcar demurrage at an unload terminal, then you have to add that up. Then it depends on how long you're paying vessel demurrage as you're waiting for that grain to arrive. Today, vessel demurrage is $7,000 a day. That's very low. Typically, it's around $25,000, $30,000 a day. In 2008, before the economic problems, it was $120,000 a day.

So you add those things up, right, and then you add up whether or not you're going to get that customer back or whether he will go somewhere else. You add up contract extension penalties. If you are able to get the grain to the vessel even though you've been paying demurrage, there are penalties for being in default of a contract if that vessel has sailed.

Unfortunately, I can't give you one number because it's very difficult to quantify and it depends on when and the circumstances. But just to give you some idea of the elements of the costs that go into it, those are them, and they can add up to something significant.

**Mr. Richard Phillips:** If I could maybe just finish on that, we don't actually have the numbers. You can guesstimate what the demurrage is in a total year and you can divide it back. The other cost that we don't know is when we will see the premium prices. As farmers, we see a premium price out there, but we don't know how much basis the company has had to take for risk on this. It's really hard to quantify what that number would be.

**Ms. Olivia Chow:** You just know it's costly.

**Mr. Richard Phillips:** Yes.

**Ms. Olivia Chow:** And from the forestry association?

**Ms. Catherine Cobden:** I would just add that we have been spending a lot of time on this issue. We look at the impacts on the companies we represent. It's in the tens of millions of dollars in the forest industry. We add up all of the bits that Wade was talking about and it translates into—I'm just talking about one sector—tens of millions of dollars.

**The Chair:** Okay, thank you.

Your time has expired, Ms. Chow.

Mr. Goodale, seven minutes.

**Hon. Ralph Goodale (Wascana, Lib.):** Thank you very much, Mr. Chairman.

Maybe I'll just run over three or four questions to start with all at once.

For efficient use of time, wait for your answers. Again, thank you to all of you for coming to talk about this legislation.

At our hearing with the minister, there were questions raised about the existence of confidential contracts already. Some shippers have them. There is language in the bill that would appear to prevent access to an arbitrated SLAs if an existing confidential contract is there.

I wonder if you could just give us some idea of how many of those contracts currently exist and how long they typically run. Is it one year, two years, or ten years? What impediment is there to accessing the arbitrated procedure? That's question number one.

Secondly, Mr. Chair, you went through the five items that the shippers have typically argued for. I gather from your testimony that those five areas are to some extent covered in Bill C-52, but they're covered only up to your level of expectation if the five or six clarifying amendments are in fact adopted. So some of your expectations are covered, but the five or six amendments here would actually make that coverage more effective and more complete. I wonder if we could have a little more explanation of that. Thirdly, there is a difference between AMPs, the administrative monetary penalties, and liquidated damages. The act provides for AMPs; it doesn't provide for liquidated damages.

Mr. Sobkowich gave us a practical example of why having access to liquidated damages is also a crucial part of the enforcement procedure here. I wonder if there are examples other than simply that of the train being late. I think it would be useful to hear some other examples. Also, in the case of grain, if we were able to find the right way to get liquidated damages into the legislation, obviously grain companies would have access to that remedy. Would some of that remedy also be shared with farmers? Would it be reflected back to producers, or is it a benefit to the grain companies that is maybe or maybe not making its way through the chain to producers? I'd like to hear a little more about that.

Reference has been made to removal of the word "operational". I think I know the point you're trying to make there, but I think we need a little more explanation as to why the use of the word "operational" in one of the sections in Bill C-52 is such a limiting legal matter.

Finally, with respect to your last two amendments and proposed section 169.37, are your fifth and your sixth recommendations for amendments alternatives to each other? I'm just trying to fully understand their legal effect. If you got amendment number five, would you also need amendment number six, or are you arguing for amendment number six only if you don't get amendment number five? Are they both necessary, or is it one or the other in sequence?

I know that's a lot of questions to dump on you at once.

● (1625)

**The Chair:** Mr. Goodale has left you three minutes to answer.

**Mr. Wade Sobkowich:** I can start on the grain side, if you'd like, Mr. Goodale.

There are more examples. Some of it has to do with car condition, where there are service problems. I'll give you a recent example. I was just talking to one of the companies yesterday. They said they had a train booked to arrive at their facility on Wednesday and were all geared up to load, but the train didn't come on Wednesday. It didn't come on Thursday or Friday. It came on Saturday or Sunday, or whatever it was, so it cost time and a half to load the train. Then on Monday, another train arrived for the next week's order. Now the company has two trains. But they can't load them up within the time period because they can't do two trains at once. So the company ends up paying what they call a delayed lift charge to the railway, because the railway will give you a delayed lift charge if you aren't able to load the train within the timeframe that you're given. That's one.

Then on the other side of it, you end up with both of those trains arriving at a terminal for unloading at the same time. The terminal can't handle all of that at the same time, so you're paying rail care demurrage on the train that you're not unloading while you're unloading the first one. That's probably the most prominent example, but we do end up with rail car condition problems that we pay penalties on, and that sort of thing. I don't know if that answers that question for you.

On whether the costs go back to farmers—I'll just finish up on that particular point—yes, anything that's a standard cost in the system, like fees that we pay to the Canadian Grain Commission, we don't compete on. So it's a line item that's the same for every company and it's factored into the basis. What the companies compete on are the efficiencies of their own operations. That's where they try to gain efficiencies as much as possible to try to attract that farmer's grain.

**The Chair:** Mr. Phillips.

**Mr. Richard Phillips:** To take just a few seconds, I think Wade is right. In Tisdale we have four major terminals competing for our grain. Any time anybody has a little extra money, they all want my grain badly. I find that they give most of that profit away back on the driveway, trying to buy my grain.

**The Chair:** Ms. Cobden.

**Ms. Catherine Cobden:** I'll make two points, if I may.

The first point is that I'd be very careful on how I defined confidential contracts. What we experience is a strong creep, albeit the latter is perhaps an insufficient word to describe it. Would you consider an email from the railways telling you that this is your confidential contract to actually be a contract between two willing parties, or a product of the monopolistic situation we're facing? When you ask that question, it is a loaded question. Some may characterize us as being under contract, but we do not accept the railway's definition of contract.

The second point is on the point of operational—thank you for asking that. I've given a description of the implications of that, but if you're interested I'll hand over to Allan to give just a few words on the legalistic perspective.

● (1630)

**The Chair:** Okay, briefly, Mr. Foran.

**Mr. Allan Foran (Legal Counsel, Forest Products Association of Canada):** Thank you.

From a lawyer's perspective, anything that's loose or requires some subjective requirements leads to litigation and expense. There's no definition of "operational". When you deal with operational, you may exclude inadvertently other service terms, things like *force majeure* or other things that would be part of a standard contract.

Operational requirements have been referred to already by members of this panel. If you look at what a railway's operational requirements are to others, you're moving the focus away from you as the shipper to other scenarios, and that's going to become an evidentiary issue as well.

**The Chair:** Okay, thank you.

Mr. Poilievre, seven minutes.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Thank you very much.

My first question is for the representative from the grain growers association. I'm looking here at an October 31 letter from your association—in fact I think it's directly from you, Mr. Phillips. In it you had three demands with respect to this legislation: one, the right for a service level agreement; two, a dispute resolution process; and three, consequences for the railway for non-performance.

Do you see those three demands reflected in the legislation?

**Mr. Richard Phillips:** Yes and no. I think what we have here is the framework for it, but the amendments that the gentlemen are suggesting here would greatly enhance and give us comfort and ability to actually enforce what we think we're getting.

**Mr. Pierre Poilievre:** What enforcement mechanisms do you require for these three demands to be met?

**Mr. Richard Phillips:** Let me just back up a little bit and say that as the growers, we're not the actual shippers. The actual enforcement will fall upon the grain and the forest companies to do that enforcement themselves. We as the farmers would not be actually enforcing this because we don't actually ship.

What I would say is that we've worked very closely and listened to everything they've had to say, and amendments that they have put forward are a really good step toward that. If the shippers don't get the ability to enforce and if they don't ship the product and they don't do what needs to be done on that side of things, then it comes out of our pockets, because they don't pay us as much money as they know that they have to pay the penalties on the other side.

I think they have answered the questions fairly well. If we look at the six amendments, they are a really good place to go.

**Mr. Pierre Poilievre:** Are all of you in favour of the liquidated damages?

**Mr. Robert Ballantyne:** That is included as part of the six amendments and all 16 members of the coalition have indicated that they are in favour of that.

**Mr. Pierre Poilievre:** Do you have a model on which that could be based?

**Mr. Wade Sobkowich:** It could be based on a model from the commodity exchanges. In agriculture we use arbitration a lot to resolve disputes. The Grain Commission resolves grading disputes between producers and grain companies. Commodity exchanges resolve disputes between their clients and customers. There are models like that which can be used. They are quick, expeditious, cost effective and all the rest, where you end up with a result at the end of the day that doesn't require you to go to court and spend $600,000 in two years to try to get a liquidated damages claim paid by the railway that was for $50,000,

**Mr. Pierre Poilievre:** You're saying that there are mechanisms for fines against one party to be awarded to another without going through a court?

**Mr. Wade Sobkowich:** Yes. I guess the way we would see this working is that you would go to the arbitrator—

**Mr. Pierre Poilievre:** Where is this done? Can you give me an example of how this works? You said in the commodities exchange an arbitrator can fine one party and then award that fine to another party.

**Mr. Wade Sobkowich:** That's right.

**Mr. Pierre Poilievre:** That is the model you wish to see transposed upon these service level agreements?

**Mr. Wade Sobkowich:** Yes. If you're asking me what I would want to see in a service level agreement, I might like a model like that and I might want it to be a final offer arbitration model, where the railway might say "Okay, this is what I'm offering on liquidated damages". The shipper might say, "This is what I'm offering". When I say "on liquidated damages", what I'm talking about is a process for liquidated damages. To go to your first question, does the legislation do all of the three things that Richard asked for in his letter—one of which was an arbitration process—I say yes, there's an arbitration process but you can't ask the arbitrator to rule on a process for liquidated damages. You can't ask the arbitrator to rule on penalties.

There is an arbitration process, but there are many exclusions, and we're saying that we would like to give the arbitrator the ability to say that this is your service level agreement, I've heard what you said and I've heard both positions, and this is what I'm giving you for your service level agreement and this is the process by which you would resolve liquidated damages if there is a breach.

● (1635)

**Mr. Pierre Poilievre:** The reason the concept seems foreign to me is that my understanding is that the fines handed down at an administrative level are almost exclusively forfeited to the consolidated revenue account of the government that hands them down, and that it is typically courts that award liquidated damages and not governments.

You've given me one example. I'd be curious to study it further, but I'm not familiar with that practice.

**Mr. Wade Sobkowich:** I have a written answer. I'm just going to make sure I covered it here:[The] Canadian Grain Commission arbitrates disputes between grain companies and producers. Commodity exchanges arbitrate disputes between commodity dealers. Canadian grain merchants and their international customers submit disputes to arbitration through their memberships and various trade associations.

And there is, in our view, no reason not to have an expeditious process.

**Mr. Pierre Poilievre:** I understand, but there's a difference between administering or resolving a dispute and actually imposing a fine on one party and awarding it to another. That is the particular proposal that you are making and I'm not familiar with that practice.

**Mr. Wade Sobkowich:** No, we're saying that liquidated damages would be payable to the shipper.

**Mr. Pierre Poilievre:** Yes, I know that. I understand that, but the point is that if it is done through an arbitration process put in place by an agency of government, that is vastly different from the way damages are imposed on a normal basis. The damages that people receive are almost always in court.

**Mr. Wade Sobkowich:** Not really. Let me just make sure I'm communicating it properly.

Say, we're negotiating with a railway. We're going to arbitration because we can't reach an agreement. So the railway is going to have their position on the various elements of the service level agreement. The shipper is going to have its position on the various elements.

**Mr. Pierre Poilievre:** Yes, of course. And there's interspaced arbitration and so on.

**Mr. Wade Sobkowich:** Right. So the arbitrator's going to come up with a mechanism that's something in between what the railways and the shippers want for establishment of liquidated damages.

**Mr. Pierre Poilievre:** Okay.

**Mr. Wade Sobkowich:** That would become the terms of the contract between the shipper and the railway. If there's a breach or if the shipper claims there's a breach, then they would go to the agency and ask that an arbitrator establish that and establish liquidated damages.

**Mr. Pierre Poilievre:** In my briefing with officials, I asked if there were precedents for an arbitrator setting liquidated damages in an agreement prior to a breach and I have not heard any example of any other organization that does this.

**Mr. Wade Sobkowich:** Other than the example—

**Mr. Pierre Poilievre:** Perhaps you could give me an example. You tell me the exchange commission does that. I'd be curious to see it. I'm not disagreeing with you. All of my experience is that it is courts that award damages against one party and in favour of another. That's different from a fine.

**The Chair:** Maybe after this meeting, could you provide some examples for Mr. Poilievre?

**Mr. Wade Sobkowich:** For sure. I guess I just go back to the principle, regardless of precedent or whatever, but I'll get that information.

What is conceptually wrong with having a quick, easy, fair, expedited process to resolve a dispute?

**Mr. Pierre Poilievre:** There is a legal problem. That's why I'm looking for precedents.

**The Chair:** We'll now move on to Mr. Toet for seven minutes.

**Mr. Lawrence Toet (Elmwood—Transcona, CPC):** Thank you, Mr. Chair.

Thank you to all of our witnesses here today. It's very interesting.

Ms. Cobden, in your statement you mentioned that ideally you'd never have to use this legislation. I'm taking it that you see it as a backstop to commercial negotiations.

● (1640)

**Ms. Catherine Cobden:** Yes, that's correct.

**Mr. Lawrence Toet:** Is there a basis on which you would say that? Have you seen a change in rail service over the last number of years that would give you some reason for that optimism?

**Ms. Catherine Cobden:** Well, I'm glad you've taken it as an optimistic view, but our perspective—sorry I've lost the thought.

Repeat the question. Sorry.

**Mr. Lawrence Toet:** You said ideally that you'd never have to use this legislation and that you see it as a backstop.

**Ms. Catherine Cobden:** Yes, it's a backstop.

The fundamental point is that the forest industry believes in commercial relations but we do not experience them on a day-to-day basis with the railways, as the situation is today. We're hopeful that the legislation moves us forward. We're prioritizing three asks of you today that take it that much further forward in terms of our having a tool in our toolbox.

**Mr. Lawrence Toet:** Okay.

My next question is directed to Mr. Phillips. As a shipper in my prior life—I will admit that it was not with rail—I did a lot of shipping with trucking companies across North America. I'm empathetic to some of the concerns that you, and in fact all of the parties, bring forward in this matter. But from what I've heard of the testimony today, I also have to be quite honest. There seems to be this sense that if the railways were a much more competitive industry, if there were 10 railways in Canada, all of these issues you've talked about wouldn't exist. I don't know whether you've ever dealt with trucking companies across North America. Do you really truly believe that having 10 railway companies across Canada and the resulting competition would solve all these issues that you've brought forward today?

**Mr. Richard Phillips:** I don't think we're asking for 10 companies.

**Mr. Lawrence Toet:** No, I'm not specifying the number; I'm just referring to the competitive basis of that.

**Mr. Richard Phillips:** I think what we're looking at here is the level of service and timeliness of service to meet our sales commitments. That's what we're really talking about.

I would say that in the trucking business if you're not getting that timely service from company A, because there are more than one of them you would go to company B. That's not always the same option here because of the distance. The rail lines are apart in the prairies, for example.

An anecdote for you is that we've worked hard to secure market access and negotiate trade agreements with all of these countries. When Pulse Canada was down in Colombia and we'd just signed a deal there, we were looking forward to increased exports to Colombia, and the Colombians said they weren't sure they'd actually buy anything more from us because they couldn't get reliable enough delivery of product on time.

**Mr. Lawrence Toet:** You were talking about some of the times when you get market pricing that just comes across and you still need to get your stuff to the market in a certain timeframe. I've run into the exact same thing in my business. I've had clients say that they needed to get something to California by such and such a date. It didn't matter what trucking company I was dealing with, they couldn't get it there in the timeframe I needed.

Those are some of the realities that we also have to be cognizant about in this. That's my point here. Does competition change and affect everything? Just because there are 10 railways, can they deliver exactly what you need every time in the timeframe you need it? Do you really believe that would be the case?

**Mr. Richard Phillips:** In fairness to the grain industry, most of the tenders that go out and that we can bid on are several months in advance. We're not trying to deliver grain to Turkey in 10 days from today. I would argue that these are time periods during which we have ample time to meet our commitments.

**Ms. Catherine Cobden:** If I could intervene, any form of improvement from added competition will be highly applauded by the shipper community. We need more competition. We don't think it's going to correct the problem 100%, but it will move us forward. You asked about the quality of the service we're facing, and in my spastic moment, I lost that point.

Honourable member, is it reasonable for forest product companies today to get only half the number of cars they're ordering? We have members across this country who are only getting 50% of the rail car supply they need to move their product. I just don't believe that's fair.

**Mr. Lawrence Toet:** Don't get me wrong, because I understand that both sides of this have to be brought forward.

One of Mr. Sobkowich's statements from back in December was this:

> We are optimistic that this legislation will allow for meaningful commercial negotiations with the railways by providing an arbitration process and legislated penalties. The arbitration process appears to be a binding, cost-effective process that occurs under a reasonable timeline.

That was his stance on December 11. I seem to be hearing quite a different point of view today.

● (1645)

**Mr. Wade Sobkowich:** I can address that.

That press release was issued on the day the bill was released. When we went through the arbitration process on that day, we were under the impression that we'd be able to take penalties and liquidated damages to the arbitrator. Since then, we've found out that's not the case.

**Mr. Lawrence Toet:** So you've had a change of perspective on that.

Basically what I wanted get at is the fact that this legislation has to strike a balance with the needs of the shippers. As I said, I've done a lot of shipping in my lifetime, so I'm very cognizant of the need to get things in a timely manner, and how frustrating it is when it doesn't happen, and the challenges you face going forward.

I also want to put into context the fact that competition doesn't necessarily negate every negative factor you have in shipping. I've had many occasions where on a Friday a truck didn't show up that I needed to be move my product to the States that afternoon. It coming on Monday didn't do me any good; I missed my delivery and I probably lost a client from it. Those things happen in the trucking industry, where you have a lot of competition. I've had firms that have served me well for five or six years, and then dropped the ball three or four months in a row—continuously.

The reason I brought that up is that we're looking at what a reasonable expectation ought to be of a competitive environment that everybody should be able to accept, whether a shipper or the railways. That's the balance we're trying to find in Bill C-52. To some degree, we've found a good balance. We'll look closely at what you brought forward as your amendments, but it's important to acknowledge that.

Mr. May, you said that you found three months to negotiate a contract to be extremely long. In my business, I would be extremely happy with that. Mr. Foran can probably speak to that, because he's probably been involved with a lot of contracts. That three months is a pretty quick turnaround for a service contract. These things can take a lot longer than that in the normal commercial environment.

Would you not agree?

**Mr. Ian May:** Yes, but it wasn't to negotiate a contract. It was to negotiate a remedy with the arbitrator ruling on which service level agreement would in fact prevail.

I want to address something else you said. I agree with you on competition, but I'm not sure that we're clear on the level of service that's being provided. I'd like to correct one thing, and you can ask others here about that. Since the government committed to the legislation, we've heard that service has improved. I can tell you that it hasn't. I can tell you that as recently as two weeks ago we had mills just about shut down because they couldn't get boxcars in western Canada, and not just one. Whether that's coincidental with a broader understanding of Bill C-52 and perhaps the fact that it is balanced versus a shipper bill that would have levelled the playing field—and that's our language—I don't know.

I can tell you that the operating model that our merchandise members are used to is their asking for 40 cars, being told that they could get 30, and then receiving 20. I agree with you that competition isn't going to solve everything. It's not going to make it a perfect world; it can't, and we don't expect that. But, Lord, we expect an improvement. It may be worse than you folks realize it is.

**The Chair:** Thank you.

We'll now move to Mr. Aubin for five minutes.

[*Translation*]

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

Thank you to our witnesses for joining us this afternoon. I would, however, like to say that I'd prefer to have fewer witnesses at our next meetings. That way, we would have more time to benefit from each witness's expertise. I would greatly appreciate that.

Since I have just five minutes, my questions will be for the Forest Products Association of Canada representatives. Hopefully, I will be able to get a better sense of the problems that shippers in my riding face.

If Bill C-52 were to come into force in the near future, what would it mean for you? Clearly, you couldn't take advantage of the measures set out in the bill with respect to existing contracts.

Does that mean that, for your association, the measures would apply in a year or two?

When the minister appeared before the committee, he told us that the reason current contracts did not qualify was to respect the confidentiality of businesses in relation to railway companies.

Do you share that opinion, or on the contrary, do you think it would be possible to apply the rules set out under Bill C-52 to current contracts?

● (1650)

[*English*]

**Ms. Catherine Cobden:** Ideally, it would be nice not to have that hurdle in the front of this bill. It's great that you're raising that question.

It was on our long list of asks. It didn't make it on our short list. Getting it into this bill is one of the most important questions that I think needs to be looked at. There's a lot of burden up front, and preliminary proceedings would be quite significant. This is a core question.

I've already made the comment as well about some of the arguments that would go forward to say whether a company does actually have a contract. In this environment that we've been living in we have seen a significant dilution to what I would call a contract amongst our membership. I can't speak for the other members of this panel, but significantly in the forest industry, there's been a dilution away from what we hope the bill is referring to, which is more of a true contract between two parties.

While I have the floor on that point, I would also like to add the challenge that this bill creates for us and the dichotomy that we're struggling with. On the one hand, we want to prioritize commercial relations, but on the other hand, the introduction of this point around third parties seems to remove the boundaries of the negotiation of the commercial arrangement. I'm very confused about that. I would really like to understand why, when we are intending to support commercial relations, we introduce this concept of third parties that have nothing whatsoever to do with the commercial relationship between me as a shipper, or Brian as a shipper, and the railway.

[*Translation*]

**Mr. Robert Aubin:** Thank you. My sense is that I have barely a minute left.

You make three main recommendations in the document you gave us.

Should we rank them by priority, or should we look at them as being concurrent, meaning you can't have one without the others?

[*English*]

**Ms. Catherine Cobden:** Yes, we have actually submitted them in order of our priorities. First is removing the word “operation”; second is the third party; and third is securing or locking down what the elements of a service agreement are. Those three are all interlinked, but that is the prioritization we place on them.

[*Translation*]

**Mr. Robert Aubin:** In a press release, you gave the bill a passing grade. I have repeatedly heard people from various organizations call it a step in the right direction. But we all know a step is not enough. If the goal is to walk, we need more than a step.

If we were able to include the three priorities you identified as valid amendments to Bill C-52, do you think it could walk on its own, so to speak?

[*English*]

**Ms. Catherine Cobden:** Absolutely.

**The Chair:** You have about 20 or 30 seconds left, if anybody wants to add something.

We'll now move on to Mr. Poilievre for five minutes.

**Mr. Pierre Poilievre:** The bill includes an administrative monetary penalty of up to $100,000 for each confirmed breach by a railway of its arbitrated service agreement obligation. That is actually four times higher than the highest administrative penalty currently available in the act.

Do you not agree that this will have some deterrent effect on non-compliance?

**Mr. Greg Cherewyk:** I think what we should consider is the fact that while we haven't seen the form that it'll take, and we understand that regulations are being drafted and will be put in place later this year, it might have an impact on what you would consider to be chronic failures.

What's difficult to understand is that hundreds of shippers across this country every day have ordered equipment and received an allocation for that equipment that may or may not meet their order. They then wait for the equipment to show up on the day it was committed to show up—and it may not show up on that day, or the amount that they had ordered or were committed to be given does not show up. Then once they've loaded and released those cars, perhaps the transit times exceed what's been agreed upon as a reasonable range. When you consider all of those factors occurring for hundreds of shippers every day and the number of breaches that would occur within those contexts, it's difficult to understand how the application of AMPs would be the most cost effective and efficient process to follow. To have each one of those hundreds of shippers appeal to the agency to have an enforcement officer come and determine whether a breach has occurred on the spotting performance or on the allocation—

● (1655)

**Mr. Pierre Poilievre:** What would be more efficient than that?

**Mr. Greg Cherewyk:** What we're saying—and here I'm building on Wade's theme—is that if there is another process that we could consider for those shippers who would like to inject that into their SLA, there is merit in looking at that alternative to allow for day-to-day discipline, which shippers would really be held to account on. That said, we know that not everyone would prefer this, for reasons that were well hashed out on the first day of the committee's meetings.

I have both the tariffs from CN and CP here in front of me showing you how everything from how we order equipment, to the documentation that we file, to how we cancel or change orders, and how we communicate comes with a disciplinary charge or fee. So there is that day-to-day behaviour modification tool in place.

It's difficult to imagine how AMPs would accomplish that, which is why we're searching for other solutions as well.

**Mr. Pierre Poilievre:** But in fairness, the administrative challenge of confirming non-compliance would likewise be present if a penalty were to be awarded against a railway in favour of a shipper.

**Mr. Greg Cherewyk:** I chose to emphasize the importance of performance metrics. If you've established a standard that says, here's the reasonable range of variability on this particular component, here's what we've agreed upon in terms of how you will service me, the window within which—

**Mr. Pierre Poilievre:** But liquidated damages, I should say, for example, would require some oversight, right? You're not proposing that the shipper would simply be able to allege, without any proof or confirmation, that there's been non-compliance and then be given liquidated damages, are you?

**Mr. Greg Cherewyk:** I'm not alleging anything, but I would defer to the lawyer to weigh in on this one.

We're talking about two things. Predetermined liquidated damages, when we've already established at the signing of contract the potential cost associated with a failure, is one thing. But determining—

**Mr. Pierre Poilievre:** I'm coming back to your first comment, in which you said that the fines are very hard to administer because there could be dozens of different infractions for many different shippers, and that to expect that the agency will go out to inspect all of those infractions.... It would take a long time.

Liquidated damages would have the same process, presumably, isn't that right?

**Mr. Greg Cherewyk:** Presumably you would have multiple arbitrators available to address those particular instances, whereas, if you paved a path to the agency to address the hundreds of potential infractions that would occur, the question I'm asking is whether that is the most cost-effective and efficient approach we can consider.

**Mr. Pierre Poilievre:** Right, but either way, whether you say that the arbitrator is going to go around investigating these alleged infractions or it's the agency, somebody has to do it and somebody would have to pay for it? Correct?

**Mr. Greg Cherewyk:** That's correct.

**Mr. Pierre Poilievre:** Okay, so there is no difference, really, in the administrative cost to the government, or to the process, between an administrative monetary penalty on the one hand and liquidated damages on the other.

**Mr. Wade Sobkowich:** Can I add a little bit to that?

The way we've proposed the amendment, you would have to submit to the agency for arbitration terms governing whether or not a service failure has occurred and the manner in which damages are to be assessed. So you're submitting to the agency for arbitration on whether a breach has occurred.

The main difference with the AMPs is that AMPs are paid to the government. Deterrence is good, but it doesn't do anything to compensate shippers for damages that shippers have incurred as a result of a railway's failure to perform. I'd say this tongue in cheek, but if deterrence is the objective and the railways have under law the right to unilaterally impose tariffs for shipper non-performance, then perhaps the tariffs paid by the shipper should also go to the government. It's silly, but that's really what we're comparing here.

● (1700)

**The Chair:** That's it.

Mr. Sullivan, you have five minutes.

**Mr. Mike Sullivan (York South—Weston, NDP):** While I have the floor, I want to put on the record that we are moving a motion to invite the Honourable Denis Lebel, Minister of Transport to appear before the committee regarding the supplementary estimates (C) before March 7, and that this meeting be televised.

I'm just making sure that notice is there and we'll deal with it in due course.

**The Chair:** Okay. I suggest you talk to other members as well, but that's on the record.

**Mr. Mike Sullivan:** Thank you, Chair.

I want to thank all of you folks for appearing. I think this is the most crowded this room has ever been.

With regard to the mechanism for compensating shippers, I personally like what you're suggesting. I think the minister suggested that each and every breach would have to go before the courts; that you'd be free to sue. Of course, as you know, the railroads being what they are have much deeper pockets than those 4,239 small or very small shippers, and spending $600,000 to get $50,000 in damages is not really a good way to spend your money.

That said, for Monsieur Poilievre's edification, the labour arbitration system in Canada has damages within it. Every labour arbitrator can award an individual or a union damages at every arbitration hearing. It's just the way it works.

Most labour arbitration is just right or wrong. Someone who was fired can be reinstated, and someone who didn't get paid can get paid. But this has expanded to include the notion of damages. There's a little cottage industry of labour arbitrators in this country who—

**Hon. Ralph Goodale:** It's a fairly big one.

**Mr. Mike Sullivan:** It's a fairly big cottage industry. Yes, that's true.

Damages aren't awarded very often, because there needs to be proof of them, but it's possible.

In Canada, in the law, each and every agreement between a union and an employer must have a provision for the settlement of disputes. That's more or less what you're asking for, that you be permitted to put in front of the service level agreement arbitrator the notion of a dispute resolution mechanism within the service level agreement, which includes the possibility of damages.

**Mr. Wade Sobkowich:** Yes.

**Mr. Mike Sullivan:** You don't have to put it in, but it would include it, so that it would avoid the awful spectre of the courts each and every time you needed to collect from a railroad company, and we know how litigious they can be.

So I welcome that amendment. It seems to me to be a sensible solution to the problem.

There are other amendments that you have raised that I also find very sensible. Any time there is vagueness in the law, the big parties tend to use that vagueness against you. So the operational term, I agree, should be dropped.

This has been asked of you a couple of times, but I'll ask you a third time: is the notion of being able to put into your service level agreements a dispute resolution mechanism the most important of these changes, if you had to order them?

**Mr. Wade Sobkowich:** Are you asking me?

**Mr. Mike Sullivan:** I'm asking anybody.

**Mr. Wade Sobkowich:** Well, different people will give you different responses, depending on where they sit.

Concerning point number one, about better defining “adequate” and “suitable”, doing that helps to ensure that the service pie grows, and I think it's one that everybody here feels is an important one.

It's very difficult to rank them, and they're inextricably linked. What we're identifying is a gap in our ability to get damages from zero to $200,000, to the point that it becomes so costly that you would initiate court proceedings or a level of service complaint.

We're identifying that there's a gap there. For us in the grain industry, anyway, I can say that it's a very important one.

It's very difficult to say which is the most important one, from my perspective.

● (1705)

**Mr. Mike Sullivan:** Is there anybody else?

**Mr. Robert Ballantyne:** I think most of us would agree with the comments that Wade has made. We've tried to put forward a package in which these things are all inter-related—we do see this as a package. As we have said right up-front, each of the industries represented won't have exactly the same emphasis, but they certainly support all of these things.

As a comment on the issue of damages, one thing I noted in my remarks was that one of the consultants who reported to the rail freight service review panel—NRG Research Group—indicated that 62% of the shippers they surveyed reported that they had suffered financial consequences as a result of poor performance.

Also, the comment has been made that the way the law is currently structured, the railways have the unilateral right to impose penalties on shippers for non-performance. So there is that provision the other way round.

**The Chair:** Time has expired, Mr. Sullivan.

I'll turn it over to Mr. Holder for five minutes.

**Mr. Ed Holder (London West, CPC):** Thank you, Chair.

I'd like to thank all of our guests for being here today and providing their testimony and suggestions. I think it's fair to say that, as we look at the suggested amendments, it strikes me that you probably all could have come together and just done one laundry list. That might actually have been a little simpler and have provided better clarity. But we have your written submissions, so we'll certainly consider your amendments as you presented them to us.

I was struck when Minister Lebel came before us and introduced Bill C-52 and gave us some descriptive references and answered questions. And here I want to acknowledge your support, in broad terms, for our effort to put this in place. It has been a long time coming; I think you'd all acknowledge that. But if I get the best sense of what you're trying to do, it is that you're trying to take what is now going in the right direction and make it a bit tighter. That's certainly how I feel you have presented yourselves today.

I want to make reference briefly to a couple of things, and then I have a couple of questions.

What the minister said was that he felt strongly that the bill will pave the way for better commercial relationships between railways and shippers, which is ultimately the best outcome for everyone. I'm going to stop there, though, because that prompted me to ask a question recently in a previous committee meeting about how things were going as a result of this proposed bill, that is to say, in the relationship between shippers and railways.

Mr. May, you were fairly emphatic in response to Mr. Toet when you said that service has not improved. That is certainly not the impression I have received. One might collectively sense that as a result of this kind of pending legislation, stronger efforts might come forward.

Can you and maybe those who have been impacted briefly elaborate on whether you think those relationships have improved?

Mr. May, since you were so strong one way, can you briefly comment on that? Bring some clarity to my mind, please.

**Mr. Ian May:** It's a cynical point of view, and I can't speak to the railways' motivation. Only they can do that, but the timing is curious. I know that CN in particular was opposed to the bill, stridently opposed to the bill all the way along, and once the bill appeared we haven't heard from CN, certainly publicly. I can tell you for a fact that things have reverted to the way they were. There was definitely a change in attitude, there was a change in the way railways treated their customers, particularly CN. It was much more collegial, much more willing to talk. That has seemed to have gone away. A couple of months doesn't make a trend, but I can tell you that my members are telling me, with some indignation, that things look like they're going back to the way they were.

**Mr. Ed Holder:** That's interesting.

Mr. Sobkowich, in a letter that we have here from the Western Grain Elevator Association, dated December 11, 2012, it was quoted that:

> [Mr.] Sobkowich added that rail service for grain shipments has generally improved in the recent past, and this legislation will hopefully be effective in backstopping and enhancing the gains that have been made.

What are your views on this Mr. May.

● (1710)

**Mr. Wade Sobkowich:** If I may, since January—and I just talked to my members yesterday about this, because I wanted the most current information on service levels—service has been very poor on both roads since January. We haven't seen service this poor, particularly from CN, in three years. Overall, the railways are delivering less than 50% of the rail cars specified by their service plan.

**Mr. Ed Holder:** So on December 11, it was good, but in January not so good?

**Mr. Wade Sobkowich:** It just changed, and they say it's the cold weather.

**Mr. Ed Holder:** And you say?

**Mr. Wade Sobkowich:** We say cold weather happens every winter.

**Mr. Ed Holder:** Mr. Cherewyk, you wanted to answer.

**Mr. Greg Cherewyk:** I would just say, to echo what we're hearing here, anecdotally we are getting calls to our office from some of our members who are irate and pointing out that, in the midst of this process that we're in right now, they're 60 cars behind. If a small shipper is 60 hopper cars behind, they're ready to fold up shop.

The comment from them is that if they don't get service, they're losing on both ends. We have farmers who were to deliver in December, who have been told they cannot deliver and won't deliver until March, and they're prepared to walk on their contract. On the buyers' side, they're also prepared. So they're getting hit from both sides. That's anecdotal.

We do measure performance in our industry as well, and I'll read for you from our performance measurement note on this, which says that “railway planning for fulfillment of customer orders has fallen off significantly since week 22, with an average of only 54% of weekly orders planned in the last six weeks”.

So anecdotally, we have these the calls coming from furious exporters not being able to get access to equipment, and that is also reflected in the data.

**The Chair:** Does somebody else want to comment?

Ms. Cobden.

**Ms. Catherine Cobden:** Representing a group of shippers that are very captive to the railways, we have actually been experiencing service challenges all the way through the piece. So I've already reported on that. It's interesting, but I didn't realize that we were all experiencing about half of what we're asking for.

There are also two ways to look at service and I just want to make sure we thought of them. One is on supply, and in that regard it sounds like we have an interesting trend happening right now with half of the needed cars arriving, which is really insufficient. The other element of service is the quality of those cars, and our members are adamant about the poor quality of the cars arriving. There's been garbage, and we've had a few incidents where employees' health and safety was at high risk with doors falling off boxcars. So there is a lot of anecdotal evidence we're in trouble as well on quality.

**The Chair:** Your time has expired. We have just a couple of minutes left before the bells start to ring.

Ms. Morin.

[*Translation*]

**Ms. Isabelle Morin (Notre-Dame-de-Grâce—Lachine, NDP):** Thank you very much, Mr. Chair.

My question is for Ms. Cobden.

You proposed three amendments. You said earlier you had listed them in order of your priorities, but the one I am interested in is the third one. It calls for a new stand-alone section that would define adequate and suitable accommodation, and service obligations.

You said that if those terms are not clearly spelled out in the legislation, the use of market power by the railways, or the legal process through arbitration, could erode these already agreed to definitions.

I think that's a very wise idea and would make a worthwhile addition to the bill.

Could you enlighten us all and tell us in real terms what could happen if those definitions are not included in the bill?

[*English*]

**Ms. Catherine Cobden:** I guess the first point I'd like to re-emphasize is that these outlined obligations—and we outline a number of them and they have been referred to already by my colleagues—have already been agreed to by everybody, so we shouldn't be running for the hills on this one. I think this is actually an easy slam dunk for a change to the process.

The idea is that if we do not get the service definitions nailed down.... By the way, this is the service we're already paying for, so let's get some clarity to that; let's put that on the record and get that clear. If we don't, then we're going to get into legal proceeding after legal proceeding, and then the outcome of those legal proceedings will start to recast and reshape this. In the worst case, it will move us away from what we're intending this bill to achieve. It's for that reason that we would like to see that nailed down and give some really strong clarity to what we mean by service.

I think it was you, Greg, who had a great description when you were talking about what the definition of adequate actually is. For a long time we've been working in a grey zone, and so adding some of these things in will be really helpful.

Allan, do you want to add anything, or is that sufficient?

● (1715)

**Mr. Allan Foran:** We already have level of service protections right now, and all this does is that is just reaffirms them. You look at the needs of the shipper, and those are paramount. It's a shipper remedy. This just makes it absolutely clear and certain that's the case.

The concern with the bill is to make sure that this new remedy doesn't impact what currently exists.

[*Translation*]

**Ms. Isabelle Morin:** I gathered from your earlier comment that you have a long list of proposed amendments, as well as a short list, the one we have here.

Are there amendments that aren't listed in this document but that you feel are important for the bill? Actually, could you send us the full list of your suggestions?

[*English*]

**Ms. Catherine Cobden:** I feel I should probably clarify that we are supportive of all six of the recommendations that the Coalition of Rail Shippers has put forward. We are an active member of the Coalition of Rail Shippers, so we support all of its amendments.

What I'm referring to is that we felt it was really important to get very specific and very focused on what we're asking for. We really appreciate what has happened with the bill in terms of its intent, and rather than going through 10, 12, or 15 asks, we thought we would put forward on the table just the ones that we thought were really aligned with the intent of the government in this bill. That's how we've prioritized this.

[*Translation*]

**Ms. Isabelle Morin:** No more questions. Thank you.

[*English*]

**The Chair:** I thought the bells would have been off by now. Is there any question from this side?

Mr. Watson, do you have a quick question?

**Mr. Jeff Watson (Essex, CPC):** I have a couple of observations. I've listened intently to the presentations today and I certainly understand the frustrations. During the rail safety discussions in this committee over the years, I've had my own reservations about the performance of rail companies and their responsibilities.

I want to cut to the chase, and I hope this doesn't come across the wrong way. Is it possible, after years of feeling mistreated by rail companies, that you're not really seeking a balanced resolution model but a punitive model that tips in your favour now? That's my first question.

Second, is it possible that, with the same sentiment, you feel justified in asking the government rather than the courts to act as the hammer? That's the question.

**The Chair:** The bells are going so I'll allow you to....

Mr. Sobkowich, you had your hand up first.

**Mr. Jeff Watson:** I thought we had time, Mr. Chair.

**Mr. Wade Sobkowich:** I'll give a brief response because I know Ian wants to add to this.

**The Chair:** I have to ask you to be very brief.

**Mr. Wade Sobkowich:** This is where we're at today. The railways enjoy this much power; shippers enjoy this much power. The legislation we're looking for with the amendments we propose would bring it up to somewhere in there.

**Mr. Ian May:** My two cents' worth is that we need the railways as much as they need us. They are vital to our business. We don't want to harm them; we just want to get them to behave better.

**The Chair:** Thank you.

With that, I want to thank all of you for coming here today. Obviously by the crowd we had here, there was a lot of interest in this. We appreciate all of you taking the time to be here.

The meeting is adjourned.