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**EVIDENCE**

**Monday, May 5, 2014**

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**Chair**

**Mr. Bev Shipley**



## Standing Committee on Agriculture and Agri-Food

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• (0905)

[English]

**The Chair (Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC)):** Good morning everyone. I want to call the committee to order. This morning, pursuant to the order of reference of the House of Commons, we are dealing with Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures, but this morning we're actually dealing only with an amendment.

The committee did clause-by-clause examination of the bill back on April 7. As we will all remember, we had a lot of good debate on it and in the end there was a recorded vote of nine to zero in support of moving the bill forward to the House, which we did.

When it went to the House there was a point of order presented to the House that in turn has returned the bill to us, again on the order of the House of Commons. So we are here this morning because the amendment only deals with the Transportation Act. As a result, we will not be dealing with clause by clause again. We will only be dealing with the relevant clause 5.1, and as part of that we will also deal with clauses 6 and 15, which are consequential clauses.

With that I'll open up the floor for discussion on the motion that is in front of us.

Mr. Lemieux.

**Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC):** Thank you, Mr. Chair.

I would like to thank the opposition members for supporting the motion in the House to move this back to committee. As you know, we feel this is an extremely important clause that we want to insert into the legislation, Bill C-30. We also heard from our witnesses that this was a very important aspect of what they were looking for to improve rail service to grain shippers in western Canada in particular. So I think it is important that it's back here in front of committee with the authority of the House for us to be able to include it in the bill. I look forward to our discussion this morning and to accomplishing that.

Thank you.

**The Chair:** I also do not want to be remiss but to thank all of the departmental staff for being here this morning, in case of need for clarification. I appreciate that you would take the time to be with us.

With that we have the motion for the new clause 5.1, amendment G-1, which is moved by Mr. Lemieux. Also clause 6 and clause 15 are consequential to clause 5.1.

Simply to formalize the wording of it, the decision on amendment G-1 applies to G-2 and to G-3, since they are consequential amendments. Before we get to the question, is there any debate on it? Hearing none, I would ask for a motion regarding G-1.

**Mr. Pierre Lemieux:** I so move.

**The Chair:** Shall G-1 carry?

Ms. Brosseau.

**Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP):** I only have a quick thing I would like to ask, and that is if we could remove proposed clause 5.1(2) dealing with the sunset aspect after two years. I was wondering if we could have a debate and maybe talk about removing that. I guess the government will probably not be open to it, but we would like to see this bill have a more long-term effect and not sunset after two years.

**The Chair:** Thank you, Madam Brosseau.

I think if we remember right, Mr. Allen had brought that up at the end of the meeting. Because amendments G-2 and G-3 are consequential to G-1, which had passed, you're raising a question about it. So I would ask if there's a response to the question. Basically, the question by Madam Brosseau is that there should not be a sunset clause but a longer term for resolution of the problem.

Mr. Lemieux, did you want to speak to that?

**Mr. Pierre Lemieux:** First, let me just ask why. Could Madam Brosseau explain why what she's proposing is so important?

• (0910)

**Ms. Ruth Ellen Brosseau:** It's because we've seen this grain crisis and the impacts it's had on farmers. We've heard testimony about how people would like something that is more long-term to guarantee that this will not happen again. We would like to have that part of the piece repealed to make sure this does not happen again, so that there is more long-term assurance that this problem will not be reproduced. It's to make sure that it is in fact a long-term solution and not something that will sunset after two years.

**Mr. Pierre Lemieux:** Mr. Chair, I'd like to ask another question.

There's a package of initiatives contained within this bill, and yet you're singling out one that you want to extend. Is that what it is? There are a number of initiatives here that are particular to Bill C-30. All those initiatives will sunset in August 2016 unless the provisions are extended.

You asking for this one to be extended?

**Ms. Ruth Ellen Brosseau:** Yes.

**Mr. Pierre Lemieux:** Through you, Mr. Chair, I'm wondering why you would ask for one provision to be extended and not all of them to be extended when they're all aimed at trying to resolve the problem of moving grain?

**The Chair:** Madam Brosseau.

**Ms. Ruth Ellen Brosseau:** I think we would have liked longer-term solutions. We would have liked something longer term in maybe all the aspects of the bill. This is the only one that we can touch on right now. That's why I'm asking for the two-year provision to be removed right now.

**The Chair:** Just to be clear, though, you were initially talking only about the extension of proposed new clause 5.1 but we may want to look at a proposed new subclause 5.1(2).

I'll turn it back over to Mr. Lemieux and we may want [*Technical Difficulty—Editor*] the department.

Are you making that a motion?

Do you want to read it, please?

**Ms. Ruth Ellen Brosseau:** I'm proposing to remove proposed subclause 5.1(2), which suggests that paragraph 116(4)(c.1) of the act be repealed.

**The Chair:** I'm sorry. I missed the last part.

**Ms. Ruth Ellen Brosseau:** I want to delete the proposed subclause with the words, "of the Act is repealed". I would like that taken out.

**The Chair:** You want it removed?

**Ms. Ruth Ellen Brosseau:** Yes.

**The Chair:** So that would be the bottom part.

If I understand correctly, Madam Brosseau is asking that proposed subclause 5.1(2), suggesting that paragraph 116(4)(c.1) of the act be repealed, should be removed.

Is there any debate?

Mr. Eyking.

**Hon. Mark Eyking (Sydney—Victoria, Lib.):** Mr. Chair, I think we need to look at this in the scheme of things. Of course, this year's crop could be a norm. We could be seeing this, we hope, for many years to come. Big money—over \$8 billion—has been lost here by the agricultural community. We have had so many witnesses come here, and this House and this committee have spent so much time on this, that I think that sunset part should be taken out of there.

Even at the very least, there should be a review after a couple of years to review what the status is instead of sunseting it. It's been a very trying situation in the last few months for everybody, especially the farmers, but even for the railroads and everybody, because we're trying to understand where we're going. I think the sunset part is something that should not be in there. A compromise would be a review at that time. If the so-called system that's in place now works, why not leave it there instead of dropping it? Maybe we could review it and tweak it. I think the sunset part should be taken out and replaced with "a review at that time" as we go forward from then.

**The Chair:** Mr. Hoback first and then Mr. Lemieux.

**Mr. Randy Hoback (Prince Albert, CPC):** When I first saw that at first glance, when we looked at the bill, I thought why did we do this? Then I got talking to people involved and started realizing that the review was actually going to be pulled forward. So we're going to see that review start this summer.

This piece of legislation was never meant to be a fix-all. It was meant basically to be a patch, so that the review could happen, and then get some structural change and good recommendations of the review that will happen this summer at the transport committee. It's appropriate that it should be done.

What I wouldn't want to see though is our not having a sunset to this. First of all, we do have an ability to renew it. So after two years, if we think we need to move it forward in another two years, we will be fully able to do that. There's nothing preventing that from that happening. It's more important though that we also don't put something in place that would hinder the review.

A sunset clause actually puts pressure on getting that review completed and recommendations brought forward in a timely manner, so that we can see the structural change that needs to happen after the proper review process.

We'd all agree this came along very quickly and the review will actually be more comprehensive and more complete to get a better piece of legislation out that will better protect farmers in the long run.

I have no problem with the sunseting at all, because the review is coming. That was the key part of this, and it is coming. Mr. Eyking, I think we agree on that. I just didn't realize that the review was actually coming this summer.

● (0915)

**The Chair:** Mr. Lemieux.

**Mr. Pierre Lemieux:** Mr. Hoback spoke most eloquently, but when we look at the package of Bill C-30, it exists to address an urgent situation in western Canada regarding the movement of grain. That's right now and for the foreseeable future. It's not meant to be a change. These changes are not meant to be in effect for eternity, for any long period of time. They're meant to be in effect to address the problem that exists today until it is properly rectified.

That's the whole package of changes. That's why I was asking Madame Brosseau some questions about this particular amendment, because this is a package of changes, not just a single change. It all works together in the same piece of legislation to address the problem that exists today and for the foreseeable future.

As Mr. Hoback said, "I think it's appropriate that it has a sunset clause". As I mentioned in my first remarks, that sunset clause can be delayed. The clauses that would repeal all of what we're doing in Bill C-30 can be delayed if the situation has not been rectified by the time we get to August 2016.

There is already a mechanism that allows for the extension of all of these provisions built into the legislation if the problem has not been rectified in a suitable way by August 2016. I believe we've addressed this in a very comprehensive manner. It has a start; it has a finish. The finish can be extended if the problem of moving grain in western Canada has not been rectified in a meaningful way.

As Mr. Hoback mentioned, there's going to be a full review of the Canada Transportation Act earlier than previously thought. That will start, as you said, this summer, Mr. Hoback. That might be where discussion would take place about long-term changes to the Canada Transportation Act as opposed to what's seen here as a short-term implementation of initiatives to address a specific problem, and then routing one of them out and saying, "Well, that one we want to go on and on and on".

In fact, as Mr. Hoback said, that would or could restrict or have an impact on the more fulsome review of the Canada Transportation Act when it starts this summer.

**The Chair:** Mr. Eyking.

**Hon. Mark Eyking:** Mr. Hoback, Mr. Lemieux, I hope it is true that that will happen. We have our experts here. Through you, Mr. Chair, is that their understanding that this is going to be reviewed and that this could continue on without any major return to the House of Commons and having to go through the whole thing again? Is there a mechanism in place for this to happen, or does it have to go through this whole process again?

**The Chair:** I would ask Madam Duff from Transport if she maybe wanted to make a comment, or I'll leave it open.

First of all I want to say thank you to Mr. Meredith for coming. He is the assistant deputy minister at Agriculture Canada.

From the Department of Transport, we have Lenore Duff, director general for surface transportation policy. From the Department of Justice, Demeena Kaur Seyan, counsel for agriculture and food inspection legal services; Alain Langlois, senior legal counsel for transport; and Sara Guild, counsel with the Department of Justice.

Ms. Duff, did you want to comment on that please?

• (0920)

**Mrs. Lenore Duff (Director General, Surface Transportation Policy, Department of Transport):** Thank you, Mr. Chair.

I'll comment on the Canada Transportation Act review. Our minister has indicated that this review will be advanced and be commencing this summer. I'll let Alain Langlois answer the question with respect to the expiry of this legislation and the provisions around that.

**Mr. Alain Langlois (Senior Legal Counsel, Transport, Legal Services, Department of Justice):** The comment was a fair comment. The way the current legislation is drafted calls for the legislation to sunset on August 1, 2016, unless both Houses of Parliament pass a resolution to extend its life.

So if your question is, do we have to go through this entire process again, to me the answer is no. You need a resolution from both Houses to extend for a period that the resolution will—

**Hon. Mark Eyking:** It has to go through the Senate and the House of Commons again?

**Mr. Alain Langlois:** By resolution.

**Hon. Mark Eyking:** I guess that's yes.

**The Chair:** Mr. Allen.

**Mr. Malcolm Allen (Welland, NDP):** Thank you, Chair. My apologies for being late. It happens with airplanes.

Mr. Langlois, we saw what happened to the last amendment. Are we confident that I'm not going to have to go through the House of Commons, and I say "me" because we approved this together, and have this turned back by the House, which would be an embarrassment, to be perfectly blunt?

So does this pass muster in your view? Quite frankly, if it's not going to, then we need to make sure that it does, otherwise we are simply wasting more time.

I have another comment-question to ask, but I'll wait for the response on that one first.

**Mr. Alain Langlois:** This is not the typical way you draft a coming-into-effect provision, but this is not novel. This has been done in the past. The language of clause 15 of the bill is found in other legislation, and that's where we inspired ourselves in drafting this. It's not something that we invented out of thin air. It was passed by Parliament before.

**The Chair:** Mr. Lemieux wouldn't mind having a comment on it also.

**Mr. Pierre Lemieux:** Malcolm, the difference between before and now is that Parliament itself has authorized the committee to include this amendment in Bill C-30 if it so chooses. That's the difference.

The process that we saw in the House cannot repeat itself, because the House has stated clearly that the committee should have another look at this amendment and if it chooses to incorporate it, it may be incorporated.

**The Chair:** Have you got a supplementary question, Mr. Allen?

**Mr. Malcolm Allen:** On the issue of sunset, and not to belabour the point, I understand why one doesn't, based on Mr. Hoback's position and the government's position that this will hopefully enable the players to come to the table and actually get a review.

In my viewpoint, it depends on what stick you want them to come with. Let me be blunt. It was a public meeting when the railroaders came before us a few weeks ago. I don't have a lot of confidence.... It's not to point at my friends down at the end. It was not you. But they were sitting basically at the end of the table like our friends are this morning and they didn't give me the warm and fuzzies that they intended to actually get a deal done. In fact, they were extremely angry, and if I can paraphrase Mr. Mongeau, he basically told us that we should not regulate him, which doesn't lead me to believe that one should put the stick away. In fact, one should get the big stick out, not the little stick.

When someone comes to me and tells me as a parliamentarian that "You don't have the right, sir, to regulate us," they are in the wrong game, and if you want to check *Hansard*, that's exactly what I told him. I would tell him that again. I've dealt with players like that across the bargaining table before. You bring the big stick because if you park the big stick, they'll bring theirs, and then you are at a disadvantage. They do not like this, and the reason they don't is that it's the big stick, and they hate it, if I can use that term. That is a harsh term, Mr. Chair, I appreciate that, but they do.

I would suggest that you may want to think about the sunset clause for a few more minutes before you decide to leave it in, because they didn't come to the table with any indication that they intended to sit down and really, truly do a full review that we all think should happen—all of us, quite frankly, literally all of us in this Parliament believe. Consequently, we've all been supportive of this and trying to make it happen as expeditiously as we possibly and humanly can.

I'm afraid if we park the stick in the sense of “let's work together on this”, you may find yourselves looking for one when you're dealing with them. I certainly won't be at the table. The government is going to be doing the review, and the folks in the department are going to be doing a review from transport. Somebody may want to be looking for that stick, and if you've parked it, you're going to have to look for another one. You may want to just keep it in your hip pocket. You don't have to use it, but you always have to have one.

The old adage in Welland is, don't come to a gun fight with a knife. So I would suggest you think about it, just for a second or two, before you say, we'd be happy to entertain a friendly amendment that simply gives you, the government, the option not to sunset this, and just take it away. It's not a big deal. The intent is this shouldn't be there forever. It should be the rail review. That should solve the issue, and then the process should look after itself and we should never have to do this again. I think that's everyone's hope and intent. But I say again, if you go with a little popsicle stick, you might get whacked on the side of the head by somebody with the big stick, and you won't have one to hit them back with.

I simply say that based on the performance of both gentlemen who came from both railroads, so you're going to have to deal with them. They didn't come to us in a conciliatory way. I would suggest you go back and look at *Hansard* and see exactly what they said. Because they didn't.

That's my only concern. I've heard the response from Pierre, I appreciate that, and from Mr. Langlois, I appreciate that as well, and I feel comfortable. I'm not stuck on the rail review. Let me make that abundantly clear. I'm not going to hang my hat on that. It's not a hill to die on for me. I just suggest it as a cautionary tale, and perhaps you might need the big stick. You just might. If you believe that the railroaders come with honesty and good intentions and intend to fix it this time.... You had one experience last year. I would suggest some of you should think about how you felt that experience was for you, and ask the shippers and the farmers what the experience was for them, and whether they thought it was a good one.

Do you think you're actually going to get a change next time? If you believe it to be true, I guess you park the big stick. If you have doubts, keep the big stick in your holster because you're going to need it come the time when they come to the table, because they are going to come guns ablazing.

Thank you, Chair.

● (0925)

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

We'll go now to Mr. Hoback, please.

**Mr. Randy Hoback:** Thank you, Chair.

Thank you, Mr. Allen. You put a lot of thought into what you were saying.

You're absolutely right about the way these guys have treated our farmers, the way they've treated our sector, the way they've treated not just grain producers but basically anybody who ships anything on rail, and the way they've taken them for granted. They've abused their relationship in such a way that they have no concept or no respect for timeliness of service, quality of service, or anything to do with service. In fact I don't think either one of those CEOs understands service at all.

If they think they can go through the review coming up this summer and get the same results as they had before, and I have to come back here next winter because my farmers are screaming because they're sitting there with not only last year's crop but now this year's crop sitting in their bins, and the two CEOs are sitting there saying they still don't have a problem, you know what? I'm going to be very, very, very, very upset, and my stick will very, very much bigger, because the farmers are my stick. That's my stick.

I look at this, and the stick is still there. It has a sunset clause. We're giving them every benefit of the doubt to do the right thing here and to realize how important it is to have proper service out of the rail system. We're giving them every opportunity to do the honourable thing, to look at things as a function of the Canadian corporate sector being responsible back to the people it serves. We're giving them every benefit of the doubt. It's up to them to grab that olive branch, because the reality is that this is not enough. I think a lot of people around this room and in this sector would say that this is just a band-aid, which is what it really is.

A lot of people are looking at the review and saying that this is what needs to happen. We need to have a proper review. We actually have to make sure that the shippers have the ability to extract service out of CN and CP.

So they may want to go to school. They maybe want to go to Dale Carnegie and learn how to win friends and influence people. I'm not sure what course to recommend to these guys. But the reality is that the way they treated us this last winter, and in fact have treated us....

That's one of the confusions I have. Everybody looks back to the last winter. It's not last winter. This goes back for years. I've loaded Super-Bs on a Friday night and Saturday morning and had them on the road Sunday, showing up at a terminal four hours from my farm, only to be told that the train didn't show up the way it was supposed to.

When you have ten trucks in a row, what do you do with it? Where do you go? Everything else is full. They're also not my trucks, so I have to pay for them. There's no compensation back to me. There's not even an apology. It's just the way it is, so suck it up. That happens over and over and over again. I can remember at a small-town elevator in Canwood the farmers going to the elevator basically every morning to ask if there was any news on that train.

You know, it's just amazing. This last year was bad, there's no question about it. There was a lot of cold weather and everything else. But you know what? This is Canada. It gets cold. We drill oil, we mine, in the cold. All sorts of activities happen when it's cold. I think they need to figure it out. If we're running trains in cold weather, there has to be a way to keep the volume up in cold weather.

They can come here with lots of excuses, but the reality is that they need to come with solutions. They need to come back to us, through this transport review committee, and ask what the solutions are so that I can get timely service and get my pulses delivered to the ship in a timely manner. They have to care, and I don't think they care.

That's the thing I go back to my farmers on the prairies the most with. They realize that we can't fix this. I can't put more locomotives and people on the rail lines. They understand that. What they don't understand is the people who take their business for granted, who do not care, who smirk in their faces. They want us to kick them. They want them to feel it, and we're the ones there to do that.

So hey, if we don't see improvements out of this, if we don't see any improvements out of the rail review, if we go through the review and get status quo, there will be lots of big sticks coming out. If CN and CP don't understand that, well, I have this Dale Carnegie course that they can go to. Maybe they'll understand it after they go to that.

I'll leave it at that, because there will be a big stick if things don't change. We've just scratched the iceberg, I'd say.

• (0930)

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

Just so that we understand, should the motion by Madam Brosseau pass then G-3 would not proceed.

The motion moved is that the amendment G-1 be amended by deleting its second paragraph.

**An hon. member:** A recorded vote.

(Motion negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

**The Chair:** Shall G-1 carry?

**An hon. member:** A recorded vote.

(Amendment agreed to: yeas 9; nays 0 [See *Minutes of Proceedings*])

**The Chair:** I want to thank the committee that it was supported unanimously. I also understand the concern and debate that's happened, and that is good. It's good that we have had that.

Knowing now that G-1 has passed, G-2 and G-3 carry as consequential amendments.

Mr. Eyking.

**Hon. Mark Eyking:** Thank you, Mr. Chair.

Of course, after last week's ruling by from the Speaker, you asked the committee members if we had any amendments to add to this amendment that's here, as long as it is relevant to the amendment that's put forward. I put one in front of committee on Friday when I

sent it. I think you guys got it translated and it's to make an addition just before proposed clause 5.1(1).

I think, Mr. Chair, you have it in front of you, and so you could get it around to the committee to take a look at it.

• (0935)

**The Chair:** It's being distributed now.

**Hon. Mark Eyking:** Do you want me to go ahead and explain it, or wait until everybody gets it first?

**The Chair:** Just wait a second, they're just about done.

Would you go ahead please.

**Hon. Mark Eyking:** Thank you, Mr. Chair.

I guess we just had a vote and we all agreed with this amendment that came back to us. For various reasons, this previous amendment that was put in place—what I think it comes down to at the end of day—is that farmers can be compensated.

It states: “in making a compensation order under paragraph (4) (c.1), the Agency shall order a mechanism to put in place to ensure that the person adversely affected receives compensation in a timely manner.”

That compares with the existing clause we voted on, which reads: “order the company to compensate any person adversely affected for any expenses that they incurred”.

I think we all understand that if, for instance.... It's my understanding that the grain commission—

**Mr. Pierre Lemieux:** On a point of order.

I don't understand the way it came in front of committee. Mr. Eyking said it was submitted on Friday by the deadline, but my understanding is it may not have been submitted then, and if it is a subamendment to the amendment we just passed, it should have been debated before we just passed this past amendment. If it's something different it should have been in on Friday.

I guess we'll just wait for the clerk to clarify this for us, or the chair.

**The Chair:** I'm going to ask for clarification from the clerk's office.

Mr. Lemieux, we may have clarification on it. The amendment being put forward by Mr. Eyking could not be put forward until your 5.1, the amendment that you put forward, was approved. That's why it came forward today. Now, it may lead to another question in terms of the timing of it being here today, recognizing that we just passed 5.1.

**Mr. Pierre Lemieux:** Okay. I had two questions, really.

The first question was, if this was a separate amendment, was it received on time on Friday? If it was not a separate amendment, but instead a subamendment to the amendment we just passed, then I'm saying that it should have been introduced like Madam Brosseau did for her subamendment.

I think what I just heard you say, Mr. Chair, was that this is not a subamendment to the amendment we just passed, so that answers that question. If it's an amendment in its own right, was it submitted to the clerk by the deadline on Friday?

**Mr. David-Andrés Novoa (Procedural Clerk):** Just to clarify, an amendment can be proposed at any time when there's a bill. As far as I know, there was no deadline imposed on this. If the amendment is not moved today, it can be moved at report stage. You can deal with this amendment here today or in the House at report stage.

**Mr. Pierre Lemieux:** Okay. You're right. Actually, now that I'm thinking of it, it said "as soon as possible". What the clerk sent out was "submit your amendments as soon as possible". Thank you.

**The Clerk of the Committee (Mr. Jean Michel Roy):** There was no specific deadline because they didn't have the chance to meet to approve a deadline—

**Mr. Pierre Lemieux:** Yes. I remember the wording now.

**The Clerk:** —contrary to the first time we dealt with Bill C-30.

**Mr. Pierre Lemieux:** Yes, no problem.

Thanks, Mr. Chair.

**The Chair:** It gives us the option of dealing with it here or taking it back to the House.

Mr. Eyking, continue, please.

• (0940)

**Hon. Mark Eyking:** So thank you for all your questions, Mr. Lemieux, but as you can see, the Liberals always have everything in order.

**Voices:** Oh, oh!

**Hon. Mark Eyking:** To go back to my addition to the amendment, as stated in the clause we just voted on, it says to "order the company"—and we're figuring whoever is transporting it—"to compensate any person" affected by any expenses they incur, and we're figuring that supports the shipper or farmer. That's very good and well, and we're assuming it's the Grain Commission that would make that ruling, but what we don't want to see is something where they're caught up in some sort of bureaucracy or judicial system, so that all of a sudden.... I'll give you a quick example.

Let's say a farmer lost \$80,000 because he wanted his grain shipped on January 5 but it was shipped on March 5. The commission ruled that he or she lost \$80,000. Okay. Now what? Does that farmer have to wait two years or a year? Can the railroads come back and take him to court? There has to be a mechanism in place so that once the ruling is there it's just like a ruling you would get from Revenue Canada: you're owed \$80,000 or \$8,000 and that farmer or shipper should assume that a cheque is going to come to them.

So my clause says this, and it's very simple: that in making a compensation order under the paragraph, the agency shall order a mechanism to be put in place to ensure that the person who is adversely affected receives compensation in a timely manner. When this process is being set up, a mechanism has to be put in place. I'm not going to say what it should be. That's for the department to figure that out.

For instance, is a bond going to be put in place by railroads and is a bond going to be put in place by grain companies so that there's a pool of money and all of a sudden the farmer will get compensated? If not, all that we've done is for naught. Unless somebody has a mechanism in place, the farmer could end up going to court during his planting season on a claim that could have been for the year before.

I think it's key to add that there's a mechanism in place. It's very simple: that the agency shall order a mechanism to be put in place to ensure that the person who's affected—I'm mostly looking at farmers, but it could be whoever—receives compensation in a timely manner. Because this could just be a headache for farmers, and it just could.... That's why I'm putting it there. I think it's important. I don't see in our whole bill here where that is stated.

That's why I'm putting it in place, Mr. Chair. I'll be open to comments or to put it to a vote.

**The Chair:** Thank you.

Is there discussion?

Mr. Lemieux, go ahead.

**Mr. Pierre Lemieux:** Thank you, Chair.

I want to confirm something. Is what Mr. Eyking is talking about pertaining to contracts that exist between a farmer and a grain company, or is this amendment pertaining to service level agreements and contracts between grain companies or shippers and rail companies?

Bill C-30 deals with both, but in two separate sections and in two different ways. In one part, the Canadian Grain Commission is dealing with arbitrating contracts between farmers and shippers, and in the other part, under the Canada Transportation Act, the CTA is responsible for service level agreements and for this clause we just inserted between shippers and the rail companies.

What is this pertaining to?

**Hon. Mark Eyking:** It's in with this bill. I don't think this whole bill is intended to say that if a farmer has 5,000 tonnes of bushels of barley that is supposed to land at Chicago for \$8 and it doesn't happen because of changes in the marketplace—we're not into that. We're not trying to make sure the farmer gets his money from the person he's selling to.

The whole bill is about if somebody is not transporting the grain in a timely manner so that they receive the money, then somebody has to pay the farmer. It's not his fault that the locomotives aren't moving.

It's not a contract between the buyer and the farmer; it's more a service level agreement; that the grain was supposed to be shipped and I have lost this money because it wasn't shipped. It wasn't moved, and now I am owed \$10,000, as a farmer. Okay, how am I going to get paid? Do I have to go to another process and a sort of judicial system? It was mentioned before here. We have big companies with deep pockets and big lawyers. I don't really know what the system in place—



• (0945)

**Mr. Pierre Lemieux:** Sorry, you are using the word “I”, “How will I get paid?” When you're using the word “I”—

**Hon. Mark Eyking:** I am using the word “I” as a farmer.

**Mr. Pierre Lemieux:** —as a farmer, so what you're talking about is the portion of the legislation that deals with contracts between the farmer and the grain company. That's the part you're talking about.

**Hon. Mark Eyking:** Well, it's when there's a ruling here—in your clause that we just put in place, when the ruling comes out that says the company has to compensate any person who is affected, right? You've already stated that. Okay, so let's add onto that—

**Mr. Pierre Lemieux:** Yes, it's a legal entity person, meaning it can be a company like a shipper—

**Hon. Mark Eyking:** It could be whoever.

**Mr. Pierre Lemieux:** It's whoever is contracting with the railways, yes.

**Hon. Mark Eyking:** Whoever has been adversely affected—

**Mr. Pierre Lemieux:** —companies—

**Hon. Mark Eyking:** —once that has been determined.... In our previous clause, it's the determining. Once that is determined, what is going to happen next? That's why you need this, to finish it up.

**The Chair:** In that it talks about the company, and then at the bottom, the amount to the shipper.

Mr. Hoback, go ahead.

**Mr. Randy Hoback:** Thank you, Chair.

I agree with Mr. Eyking in a lot of ways. I want to make sure that the farmer gets compensated and I want to make sure it is done in a timely manner. That is something I definitely want to see come out of this review when it comes forward, but what makes this really confusing and awkward is that some things are related to the Canada Grain Act and some things are related to the Canada Transportation Act. For example, an agreement between Viterra and CN would have its own labour dispute settlement mechanism in the Transportation Act. It would be part of what will probably be considered in this upcoming review on that type of compensation and how that compensation should flow and the amounts, and how they negotiate it in their level of service agreement.

When I do a contract from the farm, I come under the Canada Grain Act. It's a different act, and the minister has already brought in some considerations for that in this piece of legislation right now. So, when I do a contract with Viterra, for example, and they don't take delivery of my grain, then there is some compensation after a period of time. There is some interest paid and maybe some storage paid—I'm not sure. I don't want to prescribe that here, but I think that concept has been embedded in what the minister wants to do in this piece of legislation.

Where it gets confusing is when you flip it over now to the transportation side and Viterra doesn't have that proper level of service agreement in place. It's one thing if CN and CP are responsible and they have to pay a bill and then that bill trickles through Viterra and gets paid off to the farmer so that everybody gets—the appropriate party pays for not meeting its commitment, so whether it's the grain company not meeting its commitment or the

railway not meeting its commitment, that cash flows through to the appropriate person. I think that's there. It's just done in two different acts. One is yet to be done, and the other one is actually in the process in the Canada Grain Act with what we're doing here.

I don't think putting this in there is going to help things. It is just going to confuse it that much more. Correct me if I'm wrong, but any changes we make can only be done in this meeting with the Canada Transportation Act—is that right?

**The Chair:** Right.

**Mr. Randy Hoback:** So you're looking at things that would actually have to involve changing it in the Canada Grain Act, which I think we've already done anyway. This is really confusing and awkward to try to do here at this point in time.

**The Chair:** We have Mr. Allen and Mr. Eyking next.

I didn't know, Madam Duff, if you had any comments, or if Mr. Langlois had any comments in terms of—because we are dealing with it this morning—the Transportation Act only.

Mr. Langlois.

**Mr. Alain Langlois:** To comment on the last portion of the comment that was made, the CTA regulates the dealing with and the relationship between the railway and whoever has a contractual or operational relationship with the railways. So it's either the shippers under whoever is paying the bill of lading, or it could be a terminal. The agency has ruled in the past that a terminal could complain even though there's no contractual relationship. So you need either a contractual or operational relationship for the person or the entity to have the right to complain to the agency under section 116 of the CTA.

Once the agency makes an inquiry, once the agency issues an order under the new power that you have just passed through the amendments, the agency has full flexibility to order the railway to pay the amount in  $x$  period, I mean 30, 40, or 60 days. The agency in the other modes routinely do pay it, and if they believe that the carrier's not going to pay in a timely fashion they will pay the amount within 30, 40, or 60 days. So you can monitor whether or not there's been compliance. Often the agency will ask the railway—or not the railway because they don't have the power yet—but the air carrier or the other modes to confirm that they have complied with the order.

Now the question is what happens if they don't comply with the order? You can't remove the court process and the ability of a railway, an air carrier, or any other transportation mode to actually challenge an administrative decision. Even if we set a compensation scheme in an order of the agency there's still an appeal process embedded in legislation. If there wasn't an appeal process you can still file judicial review against any administrative action that has been issued by government. That's my first comment.

My second comment is there's already a power in the act right now, in section 33, that clearly stipulates that if somebody who was ordered to do something by the agency doesn't comply, then the current scheme calls for the agency to make its order an order of the federal court, and use the federal court rules as the means to enforce the order against the industry to get them to do something. How do you do that under court rules? You can first of all directly issue a contempt procedure against the company that has failed to comply with a legal order and that entails penalties to the company as a punishment for not having complied with an order.

The court has a process in its rule that would allow you—like any other rule, like any other court—to actually make enforceable an ordered award of money so that you could seize assets of the company. You could go after bank accounts. I mean all of these.... It's a good thing that the courts normally have to get an order to get things enforced. My first thought is that if the agency put in its order a mechanism to enforce.... My question is, I don't know what a mechanism is and assuming that the mechanism was clarified, that mechanism would still be subject to appeal. It would still be subject to judicial review. You need to go the extra step. I understand that your concern is when do you know that the legal process stops and the payment's been made? My response to that, and I've testified before on this and so has [*Inaudible—Editor*], is that I'm not aware of the railway, unless they appeal a decision because they have the right to do so, never complying with an order of the agency.

I've been doing this for 16 years and I've never seen it. Now if they disagree, they'll appeal or file a judicial review, but if they don't disagree they will comply. They don't pay because the agency has no ability to order payment right now, but if the agency has ordered them to do anything they comply. In a nutshell that's the comment I can offer the committee.

• (0950)

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

I don't know, Madam Duff, if you had anything to add to that in terms of transportation.

I want to now move to Mr. Allen.

**Mr. Malcolm Allen:** Let me thank Mr. Langlois for his clarification. My question was simply going to ask him to explain to us the difference between the agency in a timely manner, and a shipper-in-order which is actually in it. You've actually done that for me so I no longer have a question. You sort of beat me to the punch there, Mr. Chair, thank you.

**The Chair:** It happens once in a while.

Are there any other comments?

Mark.

**Hon. Mark Eyking:** I'm not in a dispute with Mr. Hoback. I don't think I've ever disagreed with anything since both of us landed here. It's just on the point you made, that this falls under the privy of the Department of Agriculture. Well, apparently it doesn't, because this whole thing is going to be under Transport.

What you stated is that if there is a wrongdoing and it's determined to be a wrongdoing, and there are losses—whether to the shipper and eventually to the farmer, whatever—the ruling would be

made by Transport. Transport would make it to the rail—if it's the rail, of course. You guys have the stick, and they usually comply when Transport.... Yes, they can go to court, but they're technically going to court against Transport Canada, not the farmer and the shipper, because you guys made the ruling.

Is that clear?

**Mr. Alain Langlois:** The Canadian Transportation Agency would issue the ruling. And if a carrier...and it's not just railway. I'm not aware of a freight railway ever having not complied with an agency order. But if the agency becomes aware that an order has not been complied with, they will table their order through the Federal Court, and then enforcement action to get the industry to comply with the order commences through whatever tools the Federal Court has. Normally when you file an order of the agency in Federal Court, it gets the industry's attention.

• (0955)

**Hon. Mark Eyking:** So on that point, Chair, I have no problem pulling my amendment out of here if Transport Canada is saying to me that my amendment is not needed because they do have the stick to go after the railroads to make sure the money flows through to the farmers and shippers, or whoever is involved.

You are stating that the mechanism is going to be there as it has always been there for Transport Canada.

**Mr. Alain Langlois:** It's already there. There's an appropriate mechanism for industry. I'll use the example of a shipper, in this case a shipper who has been granted an order for the railway to pay him compensation. If the railway fails to pay there's an ability to enforce that order through the court system right now, as with any other decision of any court around the country.

**Hon. Mark Eyking:** That gets back to Mr. Allen's comment about the big stick. When you look at this whole thing at the end of the day, the big stick is going to be Transport Canada. Under this clause we're sending back, or this amendment, they're going to have the big stick to go after them to comply or they are going to get the wrath of Transport Canada.

I'm not withdrawing it.

**The Chair:** Well, that was my question.

**Hon. Mark Eyking:** I still want it on the record.

**The Chair:** Okay.

**Hon. Mark Eyking:** If I may finish, if it fits well with what's already there, I can't see any reason why government wouldn't vote for it. It fits well with the process that's already in place, so there's no big change happening in the scheme of things.

**An hon. member:** [*Inaudible—Editor*]

**Hon. Mark Eyking:** Well, I think it's necessary for us as a committee to stay the summers.

**The Chair:** Is there any more debate? I don't see any.

We have a motion in front us, put forward by Mr. Eyking. Do I need to read it? I'm assuming not.

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

**The Chair:** I will now move on, folks. Thank you very much.

(Clause 6 as amended agreed to)

(Clause 15 as amended agreed to)

**The Chair:** Shall the bill be carried as amended?

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

**The Chair:** Thank you very much. As you know the intent is that today I will report this to the House. We know the significance of the timing of the bill so that it can be in place before the break.

I thank everyone. I thank the department heads for coming out and for your service you provided. Thank you to the committee. We'll see you a little later this afternoon.

The meeting is adjourned.

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