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Chair

The Honourable Michael Chong

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• (0900)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good morning, and welcome to the 24th meeting on the Standing Committee for Industry, Science and Technology, June 17, 2010. We're here pursuant to the order of reference of Thursday, May 13, 2010, to study Bill C-14, an act to amend the Electricity and Gas Inspection Act and the Weights and Measures Act.

I want to thank our four witnesses for coming to appear in front of our committee on short notice. We appreciate that. We have quite a bit of time today to clarify issues regarding this bill.

Before we begin, I just want to indicate that the analyst did do some research for you. He circulated a chart showing the breakdown in taxes for various markets around Canada, because that question was asked last meeting. He also did some research on the cost of ten-percenters. He's not able to break that cost down into its constituent components. He just retrieved the information on the global amount that every member spends on printing. I think those are the two pieces of information that were requested last meeting.

We're not going to begin with an opening statement because Measurement Canada has, I understand, delivered one before and I don't think there is a need to deliver another one. We will begin with Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Mr. Chair.

Thank you for being here. I apologize I was not able to be here the last time you were here, at the beginning.

You can imagine my surprise that a piece of legislation that has been presented has not had the full benefit of a lot of witnesses.

Other than gasoline, I don't think I have heard from my constituents, and I challenge other members to produce the same, that there is somehow a massive rush of concern about the weights and measures of shaved salami or pastrami. A concern, however, has been raised for some time about accuracy in measurement.

Initially the report by Glen McGregor in the *Ottawa Citizen* at the height of fuel prices served as an interesting point, when the suggestion was made that virtually one in every four or more meters or pumps were askew and not in favour of the consumer.

Your minister then came with another report after the random surveys, or the surveys themselves, and suggested that the number that were dysfunctional and did not favour the consumer had now

changed to one in 25. The data on which you have predicated this information, in my view, has never been made public. Therefore I don't know if the surveys checking these pumps—I believe 8,000 in all—were done randomly or if they were based on complaint. Can you clarify where this last round of tests came from, and where is the data specifically?

• (0905)

Mr. Alan Johnston (President, Measurement Canada, Department of Industry): Thank you.

First of all, I would like to apologize to the committee. I picked up a cold and my voice is starting to go, so I may defer to my colleagues this morning. I apologize again for that.

To answer your question, the data that we use is based on random inspections. We can separate the complaint inspections from the random inspections that we do, so that that number would not skew our information. The information can be made public. There's no problem there. We don't have it with us today, but we can make it public.

I think that answers your question.

Hon. Dan McTeague: Yes, Mr. Johnston, I would very much like to see that.

It seems that we put the cart before the horse. I mean we are all in favour of making sure there's accuracy in numbers, but it would appear to me that we have predicated the idea of mandatory certification of calibration on information no one really has, and which for now has been very much the preserve of your agency or your department.

Based on that, can you tell us whether the information was based on wear and tear, or was it based on a willful attempt by retailers, to use the minister's term, to “chisel” consumers?

I think some of your associates were here yesterday when the independent gas retailer suggested that the skew of 6%, of which 2% or one third favoured consumers and two thirds did not, was inaccurate. Can you comment on the accuracy of how you determined this to be against the retailer or against consumers? In other words, the one in 25 pumps you tested that did not favour consumers, was this rigorously tested? Has the data been peer-reviewed, or is this just an analysis that you made based on a number of factors?

Mr. Alan Johnston: First of all, the inspection data is not just related to one year. We have inspection data that goes back ten years. So this information is based on a number of years of data. You referred to Mr. McGregor's article. He had data from Measurement Canada's database going back approximately ten years.

I would also answer that I believe the majority of the errors related to gas pumps are due to wear and tear, poor maintenance, negligence on the part of the owner, and the owner has a responsibility to maintain the accuracy of the device.

In terms of the comments that I believe were made at the meeting on Tuesday, I can't respond to the issue of whether or not certain types of pumps wear and certain types of pumps do not wear. I'm not aware of that in terms of having specific studies that would prove or disprove that.

Hon. Dan McTeague: I think my concern, and the concern of my party, has been that we've drawn conclusions and assumptions and erected a piece of legislation based on the belief that the numbers that you provided were accurate, and yet we have nobody other than yourselves to question or to look to when it comes to accuracy in measurements.

Now you're saying that the minister's announcement a month and a half ago was based on ten years of data. In that, the minister pointed out, as I said earlier, that two out of three of the 6% that were asked do not favour consumers.

Mr. McGregor's article and his interpretation of Measurement Canada's study appeared slightly preceding and perhaps during some of the tests that you were undertaking, and it was far greater than that.

Is it fair to say that the public is confused or that the public doesn't have access to information that is both credible and peer-reviewed?

Mr. Alan Johnston: I don't think the public is confused in terms of the data. Again, we have shared this data. I will go back and indicate that we have done what we call trade sector reviews. We've gone out and discussed with all stakeholders our findings. We have discussed with them compliance rates. We have discussed with them the level of intervention that Measurement Canada should play in that particular sector.

For example, in the retail gas sector we consulted with CPPI, Canadian Petroleum Products Institute, with the Canadian Independent Petroleum Marketers Association, with AQUIP. We shared all that data with them. We've had no indications from any of these groups, as well as consumers, that they had any problems with this data.

Hon. Dan McTeague: Did you have Statistics Canada or anyone else verify the data you provided?

Mr. Alan Johnston: We got some of our data—in terms of the amount of gasoline that's sold in Canada—from Statistics Canada. We did not ask Statistics Canada to verify our information.

• (0910)

Hon. Dan McTeague: Would you be willing to submit it to Statistics Canada if the request were made by the committee?

Mr. Alan Johnston: Certainly.

Hon. Dan McTeague: I didn't want to fall away from the issue of random versus complaints. In this panoply of investigation that you undertook, were they indeed all random and then some that were complaints, or were they a lot of complaints and some random, or a mix of both?

Mr. Alan Johnston: Mostly random, some complaints, but the number of random versus the number of complaints would almost allow the complaints especially to be blended in without changing the numbers dramatically.

Hon. Dan McTeague: We haven't had the benefit of hearing from some of the large manufacturers of pumps. I know that the biggest ones, Dresser Wayne and Gillbarco, have not been asked to come here.

My experience with the industry going back several years, as you know, Mr. Johnston, is that most of those pumps, as they do fail, more than likely fail in favour of the consumer. Indeed the industry tells me, that is, many of the companies—and we're obviously not dealing with those that do look at this—calibrate more often than two years. In fact the calibration, certainly from the refiner to the terminal or to the purchaser, never exceeds a skew of 0.2 to 0.4, and yet Measurement Canada tolerates a half percent skew.

You can understand that if we're dealing with one in 25 pumps that are admittedly faulty, through whatever we accept as data or information, I think the public would find it equally disturbing that even if we were to pass this legislation, Measurement Canada tolerates a half a litre rip-off, if you will, or a skew, or loss, for every 100 litres dispensed. Put another way, as Mr. Van Kesteren and I have talked about this, with our 80- to 85-litre vehicles you're losing 40¢ to 50¢ value every time you fill up.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Chicken feed.

Hon. Dan McTeague: Chicken feed.

We're dealing with one in 25. I'm wondering if you could tell us whether there has been any contemplation to follow the industry standard to drop that to either zero or 0.2 rather than 0.5.

Mr. Alan Johnston: First of all, I'd like to pick up on a comment you made earlier. You said that the manufacturers indicate that most of the pumps when they wear are in favour of the consumer. Our data is not indicating that. I have no indication or no way of substantiating the information you just provided.

At this point we are not suggesting changing or making the tolerances tighter. The 0.5% is accepted internationally. We also recognize that these devices do wear both for and against the consumer and therefore you have to allow for this tolerance. If the industry feels they can tighten the tolerances, we will certainly discuss this with them at a future date. At the present time the answer is no.

Hon. Dan McTeague: Bad data can often lead to bad policy. I don't need to tell you that this is why we want to make sure we get this right. As for drafting, I will perhaps have another opportunity, subject to my colleagues. Are draft regulations ready to go? If we wish to see them, when will they be made available if they're not ready to go today?

Mr. Alan Johnston: The draft regulations are not completely ready at this point. They have been drafted. They have not been vetted, and there's a requirement to do that.

Hon. Dan McTeague: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chairman.

Good morning once again. I believe this is the second or third time you're appearing before us.

Last Tuesday the Association québécoise des indépendants du pétrole testified before us. They had read the bill and were concerned about a possible overlap of inspection requirements. According to what we heard, these same inspections are required under Quebec law. Under Bill C-14, there will be inspections. That's why they feel there will be overlap, inspections twice over.

Could you reassure us and tell us that this won't be the case? If it is the case, please tell us.

Mr. Gilles Vinet (Vice-President, Program Development Directorate, Measurement Canada, Department of Industry): Thank you.

We reviewed the requirements under the Régie du bâtiment du Québec regarding environmental safety. This is a lengthy document that contains several requirements, including one on calibration. We also looked into organizations that are certified by the Province of Quebec in this area. The purpose of calibration is to detect any possible leaks in storage tanks. There are no standard procedures for calibration of equipment and testing methods. There's nothing that guarantees accuracy in the way the Weights and Measures Act does.

We reviewed this and we discussed it with individuals from two organizations that are certified by the Government of Quebec. We concluded that there would be no overlap. In fact, the requirements of Quebec's Régie du bâtiment apply to something other than the distributor's measurement. There are no follow-ups or requirements in this area and therefore there will be no overlap. Service providers authorized under the Weights and Measures Act would be able to do their work in Quebec easily, and this would even help them.

• (0915)

Mr. Robert Bouchard: You're saying there will be no overlap. However, there are currently monitoring and inspection activities.

What is happening right now? What changes would occur under Bill C-14? Would something be added to the inspections? Can you tell us what would happen and what would be added to these activities if Bill C-14 were passed?

Mr. Gilles Vinet: Currently, only service stations in Quebec do not have to meet inspection requirements.

Mr. Robert Bouchard: Measurement Canada has not set requirements?

Mr. Gilles Vinet: No. There are no requirements in terms of follow-up. There are initial inspection requirements but once the devices are operating, there are no longer any requirements. As you mentioned, the Régie du bâtiment specifies that these devices should be calibrated every two years. That calibration applies to various factors related to inventory reconciliation, in order to ensure that there are no leaks. Currently, there is no obligatory inspection. If Bill C-14 is passed, every fuel distributor will have to be inspected every two years using certified accurate measurement standards and accepted testing methods to certify testing devices, by a body that has the authority to inspect a device under the Weights and Measures Act. That's what would change. Once the bill is passed, follow-ups will be carried out by authorized bodies.

Mr. Robert Bouchard: The bill will involve additional costs. We've been told that every two years the devices will have to be inspected and evidence will have to be provided that measurements are appropriate and compliant with the standards. If I understand correctly, this will involve additional costs and additional monitoring.

Mr. Gilles Vinet: We have been told that in many cases, the Government of Quebec accepts Measurement Canada certification. Given that Bill C-14 requires inspections every two years, this certification could be used for compliance with the standards of the Régie du bâtiment du Québec. No doubt the same organizations could do the inspections.

Mr. Robert Bouchard: Have you consulted any organizations, such as the association of gas retailers, etc.? Did you do any consultation before the bill was drafted?

Mr. Gilles Vinet: Yes, absolutely. We conducted a very broad sector review, we had very in-depth consultations with consumers, on issues such as the retail price of oil—which we are discussing—or other sectors. We held discussions with representatives from eight other sectors.

With respect to the retail oil sector, we met with the organizations that appeared before the committee this week. These organizations were in favour of the recommendation, which is based on the accuracy of the equipment. Everything was discussed at that time. Consultations lasted one year per sector. The review exercise for the oil sector lasted one year. A document was issued in order to explain the situation. We had both individual and group meetings. All of this has been displayed on the Measurement Canada website, and it is still there.

• (0920)

Mr. Robert Bouchard: Would it be possible to do something more specific with this group, in order to exchange ideas and communicate the way you see things, even though the bill has already been drafted?

Could that be part of your plans?

Mr. Gilles Vinet: Up until now, we have held consultations and we will be doing this again for the regulations. A mandatory consultation must be held when the regulations are submitted. So this group will be consulted along with the others.

As for the Régie du bâtiment and the regulations—simply to underscore that there will be no duplication and that the emphasis is really being put on other issues in addition to accuracy—I would like to mention that our inspections do not demonstrate that the compliance rates are significantly better in Quebec than in any other provinces, in terms of equipment accuracy. Basically, this shows that this requirement is focusing primarily on safety and the environment.

As I said, we intend to hold consultations on the regulations. You must take into account the fact that this group represents the independents in a province, and not all of the stakeholders.

Mr. Robert Bouchard: As you know, last Tuesday we heard from another group who were asking questions about the name of the bill. It is called the Fairness at the Pumps Act, when in fact, as you have just said, the measurements apply to eight sectors.

Have you been asked for your opinion on this matter? Did you choose the name or the title of this bill?

Mr. Gilles Vinet: No, that is not something that we decide. The minister would be in a better position to answer this question. We are not the ones who decide on the name of the bill. It is still called the Electricity and Gas Inspection Act and the Weights and Measures Act. Those names will not change. The two acts remain the same.

As for the title of Bill C-14, the minister would be in a better position to answer than we are.

Mr. Robert Bouchard: Do you feel that the title is representative?

Mr. Gilles Vinet: As far as the content of Bill C-14 is concerned, we always focus on accurate measurements and regulatory requirements.

As for the title of the act, we are much more concerned about what this bill will allow. It is not up to us to determine whether or not the title is appropriate.

Mr. Robert Bouchard: Thank you.

[English]

The Chair: Merci, Monsieur Bouchard.

Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair. I'm not sure I'll use my whole seven minutes this time, but I have a few questions.

I'll follow up on Mr. McTeague's questioning, if I could for a second. On the collection and verification of the data, he was talking about peer review processes and things like that. What is typical? What is the accepted practice as it relates to collecting and then verifying data?

Mr. Gilles Vinet: We have to keep in mind that over the last three years, Measurement Canada inspectors inspected 48,000 gas pumps out of a population of 130,000 gas pumps. That's a huge number. These were done by Measurement Canada inspectors using certified equipment, certified test procedures, approved by our engineering groups and our standing committees. So this is very solid data.

On top of that, from our database we know if the inspections are random, if they are targeted, or if there are complaints. So the

numbers we've provided represent a huge part of the marketplace. As with any study that we would commission, I do not think they could inspect so many inspections. It would cost a fortune.

That's where these numbers come from. These are the numbers that we have been quoting as unbiased, random inspections.

Mr. Mike Lake: You said there were 48,000.

Mr. Gilles Vinet: Yes, just over the last three years.

• (0925)

Mr. Mike Lake: That's a very high percentage, so it's a pretty good sample size.

Just to be clear, this research isn't funded by a consumer group or by the gas industry.

Mr. Gilles Vinet: Absolutely not. These are regular inspections done by government inspectors.

Mr. Mike Lake: Okay.

Some of that time would have actually included time during which there was a Liberal government in power, wouldn't it? It isn't the Conservative Party commissioning you to go out and report.

Mr. Gilles Vinet: I'm just talking about the last three years, but we've been doing inspections for 20 years. Basically, our inspections remain the same. The only changes we make are to ensure that when we sometimes need to adjust something technically, we do it. But it's always driven by technical, scientific evidence.

Mr. Mike Lake: Thanks for clearing that up.

Some of the witnesses who were here at the last meeting brought up some discrepancies in numbers, or there was some question around some of the numbers. I think you've said the cost—I believe it's a net cost—to consumers is \$20 million. Is that right, that the \$20 million number is a net cost?

Mr. Gilles Vinet: No. What we said was that the \$20 million was based on the 2008 inspection. From one year to another, it's pretty much the same, but depending on the price of gasoline, it could go up or down, obviously.

Basically, the \$20 million represented all the pumps that were found to be inaccurate, not complying with the regulations, that were penalizing consumers—\$20 million. There were also gas pumps that were inaccurate but were penalizing the retailers. These pumps represented possibly another \$12 million to \$13 million.

The way we approach that, however, in Measurement Canada, and it's consistent for all the sectors—it's the same for electric steam meters, for gas meters, and for truck refueller scales—is that we look at the inequity. For gas pumps, basically, the fact that one gas pump may be giving more product is not very good for a consumer who always goes to the same station and the gas pump is out of tolerance. We found a lot of gas pumps that were significantly out of tolerance. We don't want the system to be a lottery as to whether you'll be lucky that the gas station where you go is giving more product, or if you're not lucky, you're getting less product. We want accuracy for everyone. Otherwise you could have a situation where, in theory, a huge portion of the devices give more product, a huge portion give less product, and overall you could say, net that's very good, everyone is happy. But we don't want a system where it becomes a lottery as to whether the gas pump or the scale or the truck refueller is accurate or not.

So to answer your question, yes, the \$20 million represents only the portion that penalizes consumers.

Mr. Mike Lake: Ultimately, we typically go to the same gas station to fill up our vehicles. So if Mr. McTeague is going to fill up his 80-litre gas tank at the same gas station over and over again, if he's at one of those gas stations that's significantly out of whack, he's going to be hit time and time again. It's not going to balance out over time in any sense.

Mr. McTeague talks about the level of tolerance. It's an interesting question whether the 0.5% is the right number or not. Were there data on the pumps that were actually within the range of tolerance as to whether those minor inaccuracies would have been skewed towards the consumer or retailer? In a sense, that could add up over a significant amount of time, right?

Mr. Gilles Vinet: Yes, that's right. We don't have that data because we consider those devices to be in compliance. We don't know in which direction they would be.

Mr. Mike Lake: So conceivably, if you had a pump that was exactly 0.45% in a retailer's favour, over time that could result in a fairly significant amount of money to a retailer.

Mr. Gilles Vinet: That's right. That is not included in the \$20 million, and it's not data that we have.

Mr. Mike Lake: I was interested in exploring the concept he was talking about. I know you said there was an international standard of 0.5%, but is it reasonable to expect that with technology and calibration procedures being more modern and maybe more accurate today, we could actually narrow that? Is it reasonable to expect that with two years between inspections, we could get more accurate?

• (0930)

Mr. Gilles Vinet: It is unlikely. There's a reason why the tolerance is at that level internationally. There are a lot of factors that have to be taken into consideration, and the uncertainty of the calculations of the determination is a factor, internationally. Our tolerance is the same in the U.S., in Europe, in Japan and Australia. There's a reason for that.

It makes sense for the industry to target a lower tolerance, and we would be very concerned if they were not to do that. When they adjust and test a device, they have to make sure it's within the tolerance and will remain within the tolerance for a period of one or

two years. So they have to target as close as possible to zero. That's normal.

If we were to reduce the tolerance to 0.25%, again we would be off-sync internationally, but it would also introduce all sorts of challenges with regard to the testing procedure. You have to make sure your capability to test is in line with the tolerance.

There are some very good scientific and technical reasons for why it's there, and again, it makes sense for the industry to target a much lower band.

Mr. Mike Lake: Right.

The other number where there seems to be a little bit of discrepancy was... I think Ms. Savage brought up the *Ottawa Citizen* talking about 74% of the pumps being in favour of the retailer, whereas I think your numbers show 65%. Is that accurate, and why the difference?

A voice: She said 65%.

Mr. Mike Lake: Did she?

Mr. Gilles Vinet: You have to keep in mind, we don't control the information that is used by the media.

There was an access to information request made several years ago, and they used that data to produce those numbers. We don't comment whether they're right or not. When we issue data, we base it on our data, which is unbiased. All sorts of information is mixed within that database. Depending on the types of inspections they include, you can get variations. It's about the same thing.

For us, it's a ratio of about one-to-two. For every gas pump that is out of tolerance and penalizing retailers, there are going to be two that are out of tolerance and penalizing consumers.

Mr. Mike Lake: And that's about 65%.

Mr. Gilles Vinet: Yes, that's about 65% or 66%. That's our data.

Mr. Mike Lake: Let the record show, Mr. Chair, that he said that the government does not control the media, just to put that out there—not this government, anyway.

I think that's enough time for me.

The Chair: Thank you, Mr. Lake.

Mr. Masse.

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

It's another one of the Conservative Party failures in this session of Parliament—not controlling the media. They've tried as best they can.

I want to continue on that 60% to 65%. How many pumps, approximately, would that be across Canada?

Mr. Alan Johnston: There are approximately 130,000 pumps in Canada. I want to make sure you understand that's not necessarily the box. On some of those boxes, you have up to eight hoses. Each one of those could have a separate measuring chamber, which means they would be verified separately.

Mr. Brian Masse: That's actually important information, thank you, because that's something that hadn't been clarified before.

The *Ottawa Citizen* had 74%; you're saying 60% to 65%. The thing that concerns me a little bit is that some of the data here has been challenged. You're saying it's a ratio of even one-to-two in terms of the error on the side of the retailer. That would seem to be a pattern. Has that been looked at over a series of years, or is that just the tally for one year?

If it were 52% or 53%, that's one thing, but if the *Ottawa Citizen* is saying 74% through their analysis and you're saying with yours it's 60% to 65%, or one-to-two, that's not acceptable to me. It shows that perhaps the devices that are being installed or used err in favour of the retailer more than of the consumer. To me, that seems to be a pattern.

Mr. Alan Johnston: First of all, the data in terms of the 66% in favour versus one third is based on many years. It's not based on one year's worth of data. The information that was published in the article was also based on a number of years, but I don't know how he massaged the information. He didn't consult with us, so I can't tell you why that bias is there in terms of what his numbers show and what ours are showing. We believe he may have included some other data that we don't in terms of our unbiased random inspections.

● (0935)

Mr. Brian Masse: Even in terms of yours, though, the numbers show that you take a brand-new pump, you put it in a station; it's built and perhaps even designed to err in the favour of the retailer. If it's a 60% to 65% chance, that's significant. We're not talking about it erring on the side of the consumer at 45% or 50%, or whatever. If you're saying that's over a number of years, doesn't it seem that there could be even a problem in terms of the manufacturing and distribution of the mechanics behind this? If you're doing it over a number of years and the pattern sustains itself, that might be a problem as well.

Mr. Alan Johnston: I don't believe any manufacturer would deliberately set out to design a gasoline pump or any kind of measuring device that would skew what it delivers. Certainly these companies live and die by their reputation and by their technology. If word got around that they were manufacturing devices that were not the best technology available in the marketplace, there are always competitors.

As to why there's a bias, I really can't speculate on that. There may be many factors, such as wear and tear—they are mechanical. I really am not in a position to say that we have done a detailed study as to why these devices may wear in favour of the retailer more often than the consumer.

Mr. Brian Masse: I don't know how much competition there really is in this industry for that. There's very little competition in the industry for supply. We have so much vertical integration. We see now, even with Shell closing out its Montreal refinery, we're going to

have greater integration. When the numbers are that high, it gives me concern for the consumers.

You mentioned as well that in the last period you had other licensed people actually measuring for Measurement Canada as part of this study. We went through these numbers in the study that was done that was exposed by the *Ottawa Citizen*. Was that also done with Measurement Canada staff and independent people who were contracted? Is that part of the statistical and data analysis that was done?

Mr. Gilles Vinet: Again, they took all our database, so we don't know what part they used to publish their numbers. But if we look at the period of time—I believe it was from 1989 to 1998—other than for initial inspections, there were very few organizations recognized by Measurement Canada to perform on-site inspections of gas pumps over those years. Most of those inspections were done by Measurement Canada inspectors.

Again, there are different types of inspections that have been done over the years, so I don't know what they used.

Mr. Brian Masse: I guess what they're suggesting is they don't know what was used as well, by Measurement Canada. That was the testimony put forth in front of us. So what we're trying to do is sort out whether this is a real problem or a manufactured problem.

I have concerns with the allowance of new, independent, private inspections that basically are almost self-regulated by the industry, because they're going to come from people in industries that already manufacture pumps and deal with that. It's not a very competitive industry for retail inspection, in my opinion. If we move away from that, then I'm worried about the data that then gets assembled later on.

Of these things, though, I do want to move a little bit towards all these inaccuracies that were noted. Again, can you kind of explain why no real charges were laid? There don't seem to be any penalties. If this is a significant problem that came to bear, and there's \$20 million annually lost to consumers, why have there been no convictions, currently, in this system?

● (0940)

Mr. Alan Johnston: First of all, we have what we call a progressive enforcement policy. If we find that a device is out by slightly over the one tolerance, then we require them to get the device fixed within 14 days. If we find it's over two tolerances, we seize the device, which means the device owner cannot use that particular device until such time as the device is repaired, and then we will follow up to make sure that does happen.

On convictions, prosecutions right now are the only way we have to charge anyone, and we have found that prosecutions are very expensive. Sometimes the penalty doesn't fit the crime, as I mentioned previously. If you are convicted under the Weights and Measures Act, you get a criminal record, which is very severe in terms of where you may or may not be able to go or get a job. We have had some convictions. We had one, not too long ago, in New Brunswick, but again, our fines are very low as well. The judge has the ability to decide, within the range, what kinds of penalties he will levy. At the present time it's maximum \$1,000 for a summary conviction, plus you can go to jail in some cases. The judge chose to levy the fine at \$300 per charge.

So one of the things that we're trying to do is increase the fines but also introduce the administrative monetary penalty system, which is civil penalties, which, again... I want to make sure people will understand that we are not going to be out there issuing administrative monetary penalties. First of all, and very important, we do not keep any revenue related to these, so it wouldn't be a situation where we would be going out trying to generate revenue. But more importantly, we're looking for accuracy and equity, and we believe we can get that through...

First of all, we'll have to do a lot of both trader and consumer education if this new law is passed, in the sense that we have to make sure that they understand their obligations. They have to understand that they're going to have to get their devices inspected, in the case of gas pumps, every two years. And we have built into the proposed act a due diligence clause. So again, if a device owner has tried to get a device inspected and hasn't been able to find somebody for whatever reason, or has had it inspected and we find it out of tolerance, we're going to investigate the reasons why, but that doesn't necessarily mean we're going to issue a penalty to that retailer at that point in time. We may find that it's due to the device itself; it could be due to the authorized service provider; there are many reasons. It would depend on the circumstances of the individual inspection, what was found, what we determined to be wrong. That's the kind of action we would take.

Mr. Brian Masse: I'm not going to make a statement, because you can't comment on it anyway. But the minister went on CTV and pointed at the cameras and said "We're coming after you" to the retailers.

I didn't realize you could actually seize the device, though; that's new information. How many devices did you seize in this period? That's helpful, because that shows that there could be another level of influence. When you seize a device, do you actually physically take it, or do you lock it aside? I've been at some pumps and they don't say that it's locked for that reason, but it's disabled.

Mr. Alan Johnston: We can't actually take them. We tell them that they cannot use the device until such time as they have it repaired.

It's pretty hard to take away a gas pump. So they're told not to use it, and they're given a certain amount of time to fix it. If they do that and advise us they've done that, we'll either do a re-inspection or we will have somebody do an inspection to determine that it's now within the prescribed tolerances.

The Chair: Thank you, Mr. Johnston and Mr. Masse.

Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

What prompted all of this, including this proposed bill, seems to be the sampling of a number of pumps over time that indicated that roughly 94% were within tolerance, 2% were out of tolerance in favour of the consumer, and 4% were in favour of the retailer—if I understood correctly.

Actually, I'm getting more interested in the data on which this was analyzed, because we heard testimony on Tuesday from a couple of organizations that represented independent retailers in Quebec and elsewhere, and there seemed to be a couple of variables—I don't know if they're in your database—that I certainly didn't know anything about. One of them had to do with the kind of pump it is. Mention was made that a certain type of pump, called a Tokai Oppenheimer pump, tended to favour the retailer—I don't know if this is correct—and that the Gillbarco kind of pump favoured the consumer.

Assuming that is correct, and I don't know if it is, in your database, where you've done all your checks, do you identify what kind of pump we're talking about?

● (0945)

Mr. Alan Johnston: No, we don't have that information.

Mr. Marc Garneau: Okay. That's not available.

Mr. Alan Johnston: Let me just clarify, though, one point that you made. We had been working on developing changes to the Weights and Measures Act and the Electricity and Gas Inspection Act prior to the article that came out. We had it in the 2006-07 Industry Canada departmental performance report for priorities. We have been consulting since 2000. We've done a number of trade sector reviews.

So we were working towards making a recommendation to the government of the day that we needed to make changes to the Weights and Measures Act. It wasn't just as a result of the article.

Mr. Marc Garneau: Okay. In both cases, we're talking about wear and tear, but wear and tear that favours either one or the other. That's my understanding.

You also said that in going after these pumps that were sampled, in some cases it was random, and in some cases it was based on complaints.

One of the groups from Quebec was asked on Tuesday about the two-thirds, one-third ratio. They said that frankly, they couldn't understand why it wasn't half and half, and so did the others. I guess that would depend in part on the distribution of these different types of pumps.

One of them brought up an interesting point: that if there's a lot of testing based on complaints, usually complaints will be based on somebody feeling that he or she was shortchanged rather than given too much. That doesn't usually prompt somebody to complain that they're getting too much.

Do you have any kind of breakdown in terms of random versus complaints-based? I'm trying to understand this two-thirds, one-third—although, as I say, it would help to know what kinds of pumps we're dealing with. And do we know the distribution in this country of these two different kinds of pumps? I'm trying to understand the data a little better.

Mr. Alan Johnston: I don't know the distribution of how many are Gillbarco or Tokheim pumps in Canada, but I'll stand by the inspection data that indicates there is a bias, the two-thirds, one-third. Most of our inspections are random, unbiased—that is, we are out there in the marketplace doing inspections. We respond to all complaints. If anybody complains to Measurement Canada, we'll do a follow-up inspection and determine whether the complaint is founded or unfounded.

I don't have the exact numbers, unless my colleague does, but by far the large majority of the inspections are random, unbiased. They're not complaint inspections.

Mr. Marc Garneau: Can I clarify with the chair whether we will have access to the data on which the 94%, 2%, and 4% figures were based?

The Chair: Yes, we can get that for you.

Mr. Marc Garneau: Thank you very much.

I'll hand it over to my colleague to continue. Thank you.

Hon. Dan McTeague: Thank you, Mr. Garneau.

On that very point, is it safe to say that in some cases...? We don't have the data, it has not been verified statistically, and I'm very concerned that the variation you're referring to may not be as significant or statistically significant as what is presented, which gives rise to this legislation. I appreciate that the criminal prohibition or the criminal penalty is very difficult to enforce, and I think we can have a civil remedy, with some judicial discretion, obviously. But I'm concerned about the fact—in terms of the knowledge I have of several stations I have since spoken to for several weeks—that when inspections took place, it was on one or two pumps of a plaza that may have had as many as 20 to 30 pumps and that the inspection in fact took place at one of the outside pumps that don't get as much activity as ones that would be closer to the actual cashier, if payment was not made at the pump itself.

The random and extensive pump analysis, the 48,000 you refer to, was that 48,000 specific, or was that 48,000 one checked out of a group of 20? Of course, what I'm driving at is the need for us to examine the data.

● (0950)

Mr. Alan Johnston: Again, when we do an inspection of a service station, we normally would inspect all of the pumps. We would not do one or two unless it was related to a complaint inspection, and sometimes we get specific information from the complainant who says, "I was at pump number four at this station and this pump didn't start dispensing gas until it was at \$2".

Then because of limited resources we'll go out and do the inspection, because we have to respond to the complaint. We will give that individual a response, but for the most part it doesn't make sense for us to go and do one or two pumps and leave.

Hon. Dan McTeague: But that's my concern, that there may be the potential for extrapolation. There are 25 pumps, 20 pumps at a service station at Port Union and Highway 2 in my riding having the highest throughputs, and you'll see my follow-up questions deal specifically with that. Your calibration request every two years doesn't take into consideration the possibility of a sliding scale.

I appreciate that in my colleague's riding, Anthony Rota's riding, or Mr. Braid's riding, Mr. Brown's riding, you might have the old mechanical pumps that might not get as much use and might have a throughput of, say, a hundred thousand litres a year. Obviously that's fairly low, but there are places where—

Mr. Mike Wallace: He'd be out of business.

Hon. Dan McTeague: It depends. It depends on if he's not selling a lot of potato chips. But I only have so much time here, Mike.

What I want to drive at is whether you have in your capacity the ability to distinguish, on the two-year mandate, the possibility of a sliding scale that would say companies that provide a greater throughput, say 15 million litres a year at a given station, would be subject to more frequent calibration, as is the industry standard, whether it is the law or not?

Mr. Alan Johnston: No. The answer would be we would require all of them to be mandatorily re-inspected every two years.

The Chair: Thank you, Mr. Johnston. Thank you, Mr. McTeague.

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I appreciate you coming back. I believe you gave all these answers in your first round when you were here, and if those who weren't here read the blues, they'd know that.

Let's get right to the crux of the matter. This bill, regardless of its title, requiring them to do service stations and others... I think that's another point we need to make: we're talking about service stations, and they're going to look at your data, whether it's in the 94% or the 2% one way, 4% the other. But in the municipality of Burlington or any other municipality, when the truck goes across the weigh scale at any of our quarries in our area to build roads, for the rock that they're going to use to build roads, those could be out significantly and the taxpayer could be paying more money for road repair and new roads than they have to.

So this bill doesn't just deal with gasoline. It deals with others. But in fact for Measurement Canada this bill will help you do a better job in terms of making sure the consumers are getting what they're paying for. Is that correct?

Mr. Alan Johnston: Yes, that's very correct.

Mr. Mike Wallace: So the sooner we're able to get this bill passed, the sooner you'll be able to present the regulations and the sooner we will be able to get on with the job.

I don't think the opposition will oppose this in the end. It would be tough for them to oppose fairness to consumers, but you never know. What is the timeframe between this bill actually seeing the light of day and getting royal assent and it actually taking effect in the marketplace?

Mr. Alan Johnston: That would depend on the regulations. We are drafting them. We are required to consult on the regulations and then we are required to go through—

Mr. Mike Wallace: But what is your hope? What would be a ballpark? You must have a plan.

Mr. Alan Johnston: We would hope it would be by sometime towards the end of 2011.

Mr. Mike Wallace: Okay, 2011. Thank you.

Mr. Alan Johnston: We're building into it that there are requirements—

Mr. Mike Wallace: You know we'd be willing to move on it today, but some people want to slow it down.

This is the issue I'm hearing about. At one of the previous meetings, an opposition member said that if every pump were out by its maximum, it would be this ridiculous number, which would be correct if every number was out to its maximum variance, to the wrong way, which I think was a ridiculous statement, because it's not reality; it's not going to happen.

Do you have a sense? Maybe you don't, but maybe you have this sense. When I was working in the business, an average decent station in an urban centre sold six million litres per year. I think they're a little higher than that now. I think they've amalgamated, so they might be up to eight million, nine million, or ten million litres per year. There are normally three or four tanks in the ground, and it depends on the size, but they'll have 60,000 litres in them, whatever—it depends on the configuration for mid, high, and low test. Sunoco has more tanks because it has a different variety and so on and so forth. I'm using Esso; that's where I worked.

Would you not say it's a concern to the retailers from an inventory perspective? If they were losing or gaining one half cup of gasoline every fill-up, that is 30 thousand, 40 thousand, or 60 thousand litres on a six-million-litre station per year—well, it depends whether there's more than the one pump, of course. That's one underground tankful of gasoline that they're missing. Would you not think it would be a concern to them from an inventory perspective, whether they're way over in inventory or way less in inventory, and isn't that a concern that you would hear from retailers as to why they want their pumps to be calibrated correctly?

● (0955)

Mr. Alan Johnston: Yes. As a retailer or as an owner of the device, you want to make sure your profit and loss is based on a number of factors. Certainly if you're giving away product, you should be concerned about it. Most retailers are very concerned about it. They want to ensure that they're not. And they also worry about consumer confidence. It's very important for most retailers that they do not lose the confidence of the people who are spending their hard-earned dollars there.

Mr. Mike Wallace: There's been one indication that these inspections were going to be paid by the retailer and it's the same people who are doing their service. I know I got a call from the Library of Parliament telling me what the name of the company was. I had to remember. It's Serv-A-Station Maintenance, with a hyphen between the parts of the name. I don't know if they still exist or not. There was a sense that there might be some collusion between them, keeping them uncalibrated, because they're doing other maintenance

work at the pump. Have you had any complaints or experience with that kind of issue?

Also, regarding the licensing of those who are going to be doing the actual calibrations, just to remind my colleagues, could you go over what the process is to be certified and tested to be someone who can calibrate pumps?

Mr. Alan Johnston: I'm going to turn this over to Ms. Roussy. She explained it better than I could the last time, and I suspect she'll be able to do it again today.

Mr. Mike Wallace: So you had to hear it twice. I don't know why.

Ms. Sonia Roussy (Vice-President, Innovative Services Directorate, Measurement Canada, Department of Industry): To explain the process for the authorization of service providers, first of all I'd like to point out what the dynamic is in the marketplace. These service providers are small organizations across the country. I think we've made available to the committee a map that shows where the ones that are already recognized are, and you can see that they're located right across the country. They're small businesses. Their livelihood depends on their maintaining recognition from Measurement Canada.

Measurement Canada puts them through a qualification process that is very rigorous. It involves that the company must be an incorporated entity, a legal entity. They must have technicians who are going to do work on the government's behalf—it's not automatic that all their technicians can do the work—and these are the ones who are going to be identified as “recognized technicians”, as we call them.

They must attend training at Measurement Canada; it's typically one week of training. They undergo a theoretical evaluation, which they must pass with a minimum passing mark of 70%. They then undergo a practical evaluation on site, where we have them do the work, and we evaluate their work. Again they must have at least 70% on that evaluation. They must use equipment that has been approved; in other words, that meets the specifications of Measurement Canada and has been calibrated by Measurement Canada. They must also document and use test procedures that have been accepted by Measurement Canada.

All of that is an investment that the company makes to become authorized by Measurement Canada, a time and a money investment.

Once they're recognized, their name goes up on our website. Device owners go to our website to select and may call several of them to get the best price possible for the inspection work.

We monitor the authorized service providers. We do annual monitoring as a minimum. This involves audits of their work. It involves surprise follow-up inspections after they have done their work, because they submit data on their work continually on a weekly basis to us so that we know where they've been and what work they've done. We can select randomly where we will follow up on them; they don't know where we will go.

If we encounter problems with the way they've done their work—and our data over the past 10 to 20 years, depending whether it's on the electricity and gas or the weights and measures side, shows that compliance by authorized service providers is extremely high, 97% minimum.... When we do find a problem, we take immediate action. They must take corrective, preventive action.

And they can be suspended. If the non-conformance is severe enough, their authorization can be revoked. This is identified in the website, that they have been suspended or revoked. So again the livelihood of the business is at risk.

•(1000)

The Chair: Thank you, Ms. Roussy.

Monsieur Cardin.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Yes, Mr. Chair.

Ladies and gentlemen, good morning. It is always a pleasure to see you. Your approach is just as balanced as usual.

Last week, we were to hear from a witness, a representative from Option consommateurs. Unfortunately, because of all kinds of problems, the meeting did not take place and therefore she did not come.

I did, however, have the pleasure of meeting her. She wanted to say that she had participated in the process—you began this process a few years ago in order to review all of the aspects—and that people had ample opportunity to express their views.

In a nutshell, if I were to summarize her conclusion, I would say that they are in favour of Bill C-14, particularly those clauses requiring merchants to ensure that their measurement instruments are in compliance on a regular basis according to the schedule established by the minister. They also agree with using outside service providers, providing that they meet transparent criteria and that their work is periodically inspected by Measurement Canada.

Hence, these conclusions contain two aspects tied to inspections. In her presentation, she told us that in certain places—such as in the United States, apparently—annual inspections are conducted. The frequency of inspections will be established in the regulations. It would appear that these regulations may be calling for more frequent inspections.

What is your position on that matter? Do you feel that there is a real need to have inspections carried out more frequently, on an annual basis?

Mr. Gilles Vinet: This decision was made further to consultations with the industry and stakeholders, including the representative you referred to. A few years ago, we held consultations and the stakeholders made a unanimous recommendation: an inspection every two years.

In Canada, weights and measurements come under federal jurisdiction, whereas in the United States, this area comes under the individual state. Consequently, every state makes its own decisions. That explains the situation in the United States: in some locations, inspections are carried out every year; elsewhere, this is done every two years. In Europe, the situation varies from one

country to the next. In Germany, inspections are carried out every two years, whereas in France, there is a mandatory inspection every year.

We based this decision on our understanding of technology, on compliance rates, the economic situation and measurement techniques. We felt that, for the time being, every two years was appropriate.

You must bear in mind that we will have regular follow-up. Under Bill C-14, the authorized service providers will provide us with the measurements of the equipment following the inspection. So we will be able to assess the situation over the years and determine whether or not the two-year frequency rate is relevant, if ever a review should prove to be necessary.

•(1005)

Mr. Serge Cardin: If I were to summarize to some extent the viewpoint of the Option consommateurs representative as regards the external service providers, I would say: Who is going to be monitoring the ones that monitor? Measurement Canada has a frequency rate that should enable it to assess the various providers.

Mr. Gilles Vinet: As Ms. Roussy mentioned, Measurement Canada monitors the authorized service providers. She explained the process. This is a really detailed process, and the authorized service providers would have a lot to lose if it were determined that there was a problem with their operations. Should they lose Measurement Canada recognition, essentially, they would find it very difficult to win service contracts.

Mr. Serge Cardin: I am struck by one thing. We know that the level of tolerance for pumps is 0.5%, and Ms. Roussy told us there needed to be 70%... So, you have a 30% tolerance rate for supervisor training, if you're saying you need 70% to become a certified supervisor.

That discrepancy is striking.

Ms. Sonia Roussy: When it comes to our assessment, we refer to 70%. On crucial points, you have to have 100%. Not 70% for each exam question. Some points have to do with the way to carry out an audit, and for those you need 100%. There can be no failure.

However, there is some margin for issues like marking or completing documents. These points are less crucial, but they remain important. However, they do not relate to the device's accuracy. That is why it is 70%.

Mr. Serge Cardin: I am somewhat reassured. Indeed, I was thinking that if the tolerance level for the passing grade for the assessment of a pump supervisor were 30%, it would be far from the 0.5% at the pump.

At the end of the day, I told myself—and I've already said this in committee—that at first glance, I could not imagine how a supplier, especially a retailer, could tamper with the pumps, because at some point, it would become obvious. The lower the supply, the more there may be attempts to tamper. The gap would therefore increase and there would be a significant risk that people might realize this. I believe there is a low risk of people trying to tamper with these devices.

Earlier on someone referred to a tolerance level of 0.5%. That seems rather normal to me, you need it. You can aspire to perfection, but it is hard to achieve. If members of the House of Commons were supposed to be 99.5% perfect, I can assure you things would be different. Well, we tolerate more. As far as possible, we must aim for perfection.

In terms of fraud, I would be quite surprised. The problem, I would submit, is the price. If the price is \$1 per litre—I think 40 billion litres are being sold annually in Canada—one tenth of a cent difference amounts to \$40 million. If it is half a cent, it would be \$200 million, or 10 times higher than the annual gap noted on these devices on average, which is worth \$20 million. On the other hand, a one-cent difference amounts to \$400 million. Under these conditions, I think it is far more important to watch prices. Retailers would benefit much more from changing their prices by a few tenths of a cent than by tampering with the pump.

Earlier on I referred to the opinions of Option consommateurs. I would tend to agree, especially given that the audits are carried out by professionals, relatively frequently. A number of comments you made earlier on concerned me. They brought to mind a host of ways in which to tamper with the meter or the products.

I will give you an example. Last weekend I filled up four 20-litre gas containers for maintenance purposes at my farm house, but I realized I had pumped 23 litres into them. Perhaps I could have lodged a complaint. Perhaps you would have done so, given the fact that these 20-litre containers actually contained three additional litres.

•(1010)

Mr. Gilles Vinet: You have to be careful. These plastic containers are not certified. Often, there is a line on them. It is difficult to judge the quantity on these containers.

[English]

The Chair: Merci.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

Just quickly, so that it's on the record, when we talk about the tolerance levels of the pumps that are allowed volume-wise, what does that constitute? Is it a cup of gas in a fill-up?

Mr. Alan Johnston: We use the term about half a coffee cup. Now, we don't have a standard coffee cup, but it's about that. I used to use five of those little creamers for your coffee, but of course they vary in size as well.

Mr. Dave Van Kesteren: And it could go either way.

Mr. Alan Johnston: It could go either way, although the bias is in favour of the retailer.

Mr. Dave Van Kesteren: The other issue that I want to bring forward was brought forward the last time. You weren't here; it was with the independent petroleum association. A good reason, I think we all have to acknowledge, is that pumps will wear out and eventually you'll start having some problems with them. I think we've pretty much established that it's tough to tamper with these things, so it's a matter of them wearing out. It's also very probable

that if a retailer has a faulty pump, if it's costing him money, he's going to call the maintenance man and get it fixed.

On the other side of the coin, it's also very probable—I'm not inviting any aspersions, but it's human nature, we're just talking about human nature—that if you're picking up a buck a fill-up, maybe you'll just kind of turn a blind eye. This could be a logical explanation as to why the slant goes one way rather than towards the other way. It's just a suggestion, but I think overall it's fair to say.

Finally, the last thing I think we need to focus on is that although the focus seems to be on gasoline, you drafted this bill and you said you started this process in 2000 because the legislation was inadequate. We'd moved forward and there were some changes that had to be made.

Let's just forget about the gas for a minute. Although it's important, I think we've beat the thing to death. Can you help us focus on maybe, in other areas, why this bill is so important to Canadians, so important to our economy, and so important to the flow of goods, why it is so necessary and why we need to get it passed?

Mr. Alan Johnston: Certainly it focuses on a lot more than gasoline. It focuses on eight sectors, plus the Electricity and Gas Inspection Act. We have retail petroleum, obviously, as well as wholesale petroleum, dairy, retail food, fishing, logging, grain and field crops, and mining. The compliance rates in those areas are lower than they are for gas pumps, and that is for a number of reasons.

I'd also say that while it's difficult to tamper with these devices, it's not impossible. A lot of these devices are subject to environmental conditions: they're sitting outside, and there is dirt, temperature variations, and things like that. Why it's important is that internationally Canada needs to be recognized as having a very solid weights and measures system for trade purposes, and we do have that. I think we do. And it's important that we maintain that.

The cost of goods and services to the Canadian public is going up. Food is costing you more. Gasoline was up to \$1.50 a litre; it's now down, but we don't know where that's going to go.

We have Canadians who are subject to increasingly higher costs, who expect their government to provide them with accurate measurement. This is what this bill is intended to do. We recognize that because of the different mandatory inspection periods, the devices sometimes wear differently, and we've recognized that in the legislation.

Retailers live and die by consumer confidence. If in fact they lose that—and this was confirmed with Jane Savage and Peter Boag—they would suffer financial loss, and that's not in their best interest as well.

From my perspective, again, we're talking about accuracy and equity in the marketplace. We believe this bill will certainly improve that. We believe it's important for consumers and for the retailers to have that confidence in the marketplace. That's why we're here today, and that's why we hope the committee will support the bill.

●(1015)

Mr. Dave Van Kesteren: My final comment is that politicians love to be in the spotlight. We take the lumps, but we certainly do get the credit for a lot of this. But in reality, this is a bill that has been drafted by bureaucrats who really aren't siding with one side or another. We're just looking at the best interests of consumers.

In this particular case, this is legislation that is necessary, timely, and certainly needs to be passed as quickly as possible.

Mr. Alan Johnston: Yes. We firmly believe that is the case.

The Chair: Thank you, Mr. Van Kesteren.

Mr. Masse.

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

If that's the case in terms of how it took so long to get here, in terms of tabling it as legislation, the infractions were happening for a decade before. The *Ottawa Citizen* came out with a report, and you said that you were already working on legislation. If there's some urgency, why did it take until 2010 for the bill to come forward, and also so late in this parliamentary session?

Mr. Alan Johnston: I can only comment on part of that.

As part of our review, we were looking at a number of sectors. We went to StatsCan and identified that there were approximately 39 trade sectors in Canada where measurement formed the basis of the transaction. Then we started on these trade sector reviews, but we were doing one or two a year.

Part of it when we started was a learning process for us, but we were trying to obtain enough information to be able to substantiate the proposed changes, and that didn't happen overnight.

There may have been elections or any number of reasons this bill did not move as quickly as I would have liked, but I can't comment on when it was introduced. We worked very hard. We brought it to the attention of our senior management in the department, they bought into it and brought it to the attention of the minister, who also bought into it. I can only say that the timing is not under my control, but we worked very hard to get it here.

Mr. Brian Masse: Because we are now looking at the bill and a series of concerns have been raised—and there are some very good things in this bill as well, no doubt about that—I think the impression is made that it's being delayed unnecessarily. There seems to be some urgency, but the fact of the matter is that we just recently got the bill.

We had recalibration of this government after prorogation, and the recalibration has led to, I don't know, maybe three bills passed in this House of Commons if we get the Homolka bill passed, hopefully today.

I just don't want the impression to be made to the public that we are—

The Chair: Mr. Masse, Mr. Lake has the floor on a point of order.

Mr. Mike Lake: Just for clarification, it could be that some of this might have to do with the NDP moving three-hour concurrence motions almost every day in the House of Commons.

The Chair: Mr. Masse, you have the floor.

Mr. Brian Masse: That's actually a lie. When you talk about almost every day in the House of Commons, that actually hasn't happened. In looking at the number of House sitting days, maybe the parliamentary secretary would break down how many days we sat in this session and how many times we've actually moved a concurrence motion.

Mr. Mike Lake: Perhaps what could be done is that people could go and look at how they vote and see how many words are spoken by the NDP in the House of Commons versus every other party.

The Chair: Okay, Mr. Masse, you have the floor. Go ahead.

Mr. Brian Masse: I know there's an aversion for democracy, but at any rate I do want to move in terms of one of the things we've discovered during this.

One of the things I'd like to see in terms of an improvement to the bill—and I don't know how to do this amendment—is that it appears that the consumer will pay for the new process in place. Let's assume that we get a really good process, and even if we don't have, for example, what I would prefer, which is the public service doing this, if there's a mixture of public service and private sector, which I have a lot of concerns about, but if we look at compromise, the evidence we have so far is that the cost is going to be passed on to the consumer. It will be disproportionate, perhaps, because the cost of servicing and inspecting those pumps might be cheaper where there is a greater quantity of them and perhaps some better competition for measurement of those pumps because of the numbers.

In rural areas, for example, you have to drive hundreds of kilometres to get to a gas station. Or ironically, in southern Ontario, you have to drive hundreds of kilometres to get to a gas station on the 401 right now. At any rate, you might actually pay more.

So is there any way to build into the bill that the consumers and retailers aren't faced with this, and the suppliers and manufacturers of the equipment actually have to absorb the maintenance of it?

●(1020)

Mr. Alan Johnston: That would be a difficult one to answer.

First of all, I would like to state that Measurement Canada will still be out there doing marketplace monitoring or random inspections. Granted, we won't be doing the same quantity of inspections we're doing now, but we will be out there doing independent inspections.

As we identified in the maps we provided earlier, we already have a number of authorized service providers in remote or less populated areas. We believe that once this bill is passed, if it is passed, we would see an increase in those providers. We have talked to a number of companies about that. If they can't find an authorized service provider, Measurement Canada still has a requirement to do that inspection.

In terms of passing it on through suppliers or the manufacturers, I don't know how that could be done, to be honest with you.

Mr. Brian Masse: And to me that's a real concern, especially once again that in... And I know the thought that if your pumps are habitually having trouble and they're identified to the public, you might lose business to competition. The fact of the matter is, gasoline is an essential product for consumers and for businesses, and there are lots of reasons people will put up with going back to a bad retailer, because they have no choice.

The Zehrs location in my area was flagged a couple of times for having improper measurement, but my wife still goes there because she gets the groceries, and the lifestyle we lead requires that as a convenience, so we'll accept the loss to go there. And it still hasn't deterred the retailer from that.

I'm still looking for a way that this isn't going to be passed on to the consumers. And when you look at the rural area in terms of consideration of the ASPs, the authorized service providers, for those in more isolated or less competitive markets, if they have poor practices, are they going to be punished or penalized in a way that might be different from other areas where there is greater competition?

Mr. Alan Johnston: No, I don't believe so.

First of all, we have built into the bill—and I'll use gas pumps as an example—that if any retailer could not get the pump inspected within a two-year period and can demonstrate that they've made every effort to do that, then they're going to be given an extra year to do so. Now, that doesn't mean we're going to do that carte blanche.

In terms of consumer choice, I am always surprised that in Canada people will drive 15 blocks to save a tenth of a cent on a litre of gasoline when you figure out how much that's cost them, but that's the fact. So if you choose to tolerate a loss of product from a station, that's your personal choice. Our objective here is to make sure you don't have to do that, and that is by ensuring that those pumps are accurate.

And we think that within two years that should happen. I don't know the exact data for the station you have in question, and we don't know how often that was inspected, but certainly our objective is to ensure that everybody is treated equally. In rural areas there are going to be issues in terms of travel. We hope to be able to identify enough ASPs to minimize that, but certainly we're not targeting rural versus urban or major versus independent. We're in the business of accurate measurement. It doesn't matter who does it.

Mr. Brian Masse: Once again, even though the bill has been tabled as one for the gas price at the pumps, one of the things that did intrigue me in your testimony is that you felt that the discrepancies were consistent with all industries. Did any other industry stand out that has a significant problem even beyond this one here? Is there one that consumers should be more aware of that could have a discrepancy, whether it be in the retail sector for food or for other types of stock industries? Is there one in particular that seems to be higher than others, and what is the reason for that?

•(1025)

Mr. Gilles Vinet: If we look at consumers, for retail food we're looking at the same level of numbers as gasoline. But in other

sectors, as we mentioned, for example, truck refuellers, the compliance rate is about 80%—it's not 94% for measurement; it's 80% of diesel fuel for those trucks. For home heating oil meters we're looking at a 70% compliance level. So yes, other sectors suffer.

Mr. Brian Masse: Thank you.

Why would diesel, for example, be so different from gasoline in terms of the discrepancy? Because they use pumps that are designed by the same manufacturers as those for gasoline.

Mr. Gilles Vinet: I wouldn't say it's because it's diesel versus gas. These are a different type of high-flow measuring device. But again, we have to keep in mind that right now under the act there is no obligation to have those devices calibrated and inspected with authorized procedures. Right now there is nothing. So some of those devices can stay in service for a long time without being calibrated, and that's what we're seeing when we do those random inspections.

Of course in the context where these devices would have to be calibrated on a regular basis using approved test procedures and standards, we believe these low compliance rates would disappear and the situation would improve.

We think the bill provides us with additional tools that will allow us to improve the situation in the marketplace.

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

The Chair: Thank you, Mr. Masse.

Mr. Lake.

Mr. Mike Lake: You guys, correct me if I'm wrong, but it seems as though we're getting to the point where we're asking similar questions and things like that. Maybe we can go just one more round. I know Mr. Rota and Mr. McTeague have a few questions. If they want to, they can take six minutes to split their round or whatever. Does everybody else agree that we'll forgo our round then, if that's going to be the case?

The Chair: We have just over 30 minutes left. Do members of the committee wish to continue until 11 o'clock, or do they wish to adjourn early? It's up to members.

Mr. McTeague.

Mr. Mike Lake: If you guys wind up going seven minutes, we're okay with that. That's fine. We'll pass it.

The Chair: Mr. Lake, Mr. McTeague has the floor.

Hon. Dan McTeague: Thank you, and I appreciate that from Mr. Lake. I want him to know that when he looks at the way in which the questions have been designed, the usual status of the opposition getting more time was actually changed by this member to the detriment of my colleagues and members—they're probably upset with me—back as early as 2003 in favour of the NDP, the Bloc, and the Conservatives.

The Chair: Mr. Lake, do you have any questions?

Mr. Mike Lake: No.

The Chair: Okay, Mr. McTeague and Mr. Rota, go ahead.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): I'll be very brief. I just have a couple of short questions on rural gas stations.

The two-year inspection period has been discussed quite a bit, yet I'm hearing numbers, or a discussion, that in urban centres maybe it should be every six months, or it should be based more on volume. How was the decision made to choose two years over volume? Where does that come from?

Mr. Gilles Vinet: This was discussed during our consultations. We looked at what's done in other countries as well. We don't know of any country that would make a regulation based on the throughput of the gas dispensers. The maintenance and the coordination of that would be very difficult. Of course, under the act the retailers are responsible for making sure their devices are accurate. So if a station had a very high volume of products, a good retailer will often have those devices calibrated every year.

Every two years there would have to be a mandatory certification to make sure that, yes, they are in compliance with the act. For really high volume, that would be possible, but to base it on the throughput, to administer, enforce, and monitor that, it would be extremely difficult and extremely costly.

• (1030)

Mr. Anthony Rota: So the two years was a random number?

Mr. Gilles Vinet: No, but two years seemed to be reasonable, given the technology that is used and what is done in other countries. That was determined to be appropriate.

Mr. Anthony Rota: On the regulation, you mentioned that if someone has a rural gas station or is out of the way, they can apply to have a one-year extension.

On a previous study we had economists come in and say that if the government was serious about something or wanted to put something in, they should put in a subsidy of some sort to get service to that point. Has that been discussed or considered for rural Canada or remote gas stations, so that remote Canadians can have a gas station that has accurate measures? Is there any kind of subsidy that has been discussed?

Mr. Alan Johnston: No.

Mr. Anthony Rota: Nothing. Okay, very good.

I'll just make one last comment, and you can comment on it if you like.

You mentioned that probably for retailers the greatest thing they have, or the biggest asset they have, is consumer confidence. That's basically all they have. I mean, if people aren't confident in it... The minister has made some pretty extreme accusations. How has that affected the retailers?

Mr. Alan Johnston: I don't think they're very happy.

Mr. Anthony Rota: That's good enough. Thank you.

The Chair: Mr. McTeague.

Hon. Dan McTeague: Mr. Johnston, Mr. Vinet, Mr. Cotton, Madame Roussy, thank you.

I want to get to some very helpful questions, I hope, that will allow you to provide us some guidance here in this committee as it charts its way through what appears on the surface to be a very easy

issue but in fact can be very complicated and have unintended consequences. I think that's one of the missions that certainly our party is trying to resolve.

The issue of pump accuracy, as you can appreciate... My experience with tomorrowsgaspricetoday.com is that it gets 40,000 to 50,000 visitors a day with commentary even when there is no change in the price of fuel, so the public is extremely sensitive to this. We're all caught as legislators and you are as administrators, as those who are behind that wonderful seal that is put on every pump, or most pumps, across Canada.

I'm wondering, and it's further to what Mr. Rota suggested, and it leads to where I left off, about the concern about throughput volume. I take it that responsible retailers will in fact inspect more frequently. I give the example of the one in my riding. It's an Esso station next door with a substantial volume of throughput, and it will inspect every two to three months. They just get that much, and they are concerned about wear and tear. At the same time, we may have a prospect of a small pump, a single pump, an old Tokheim that's been around for 30 years. Sullivan's Grocery Store in Ennismore, Ontario, has a single pump whose throughput is 115,000 litres every year. It's hardly worth keeping there, but it is nevertheless filled there and they do maintain it.

Since we have not seen the draft regulations, I want to ask you if any consideration has been given to looking at the prospect of regulating on a sliding scale for the purpose of certification, where the time period would be relative to throughput. I think this would demonstrate that the government clearly recognizes that two cars coming off a parking lot, one will change oil every 5,000 kilometres, and the other changes every 100,000 kilometres, even though it's in the same period of time. I think you will find the analogy is very apt.

Would it not be preferable to have a sliding scale, considering what you're trying to address here, which is the prospect of wear and tear? Retailers have told us that wear and tear is primarily responsible for the skew. Is that something you would consider?

Mr. Alan Johnston: The short answer to that is no, we did not consider a sliding scale. Just as you indicated, and my colleague Mr. Vinet indicated, the owner of the device is required to keep the device accurate. If large retailers with that kind of throughput are getting their pumps checked every three months, as you indicated, that's good. It improves the accuracy within Canada. At some point, if you don't have those pumps checked, if you do go simply on throughput, you could have a device maybe in a rural area that wouldn't be inspected for five years. I don't think that's fair to the consumers in rural areas that their device would be inspected only once every five years based on throughput, when there are many other factors involved relating to the accuracy of the pump.

Hon. Dan McTeague: Mr. Johnston, that is probably for us a troubling perspective in the legislation, again, not having the benefit of the regulations. The duty of care for the retailer is what I think you're referring to, that they must perform the due diligence which you referred to specifically. Those regular calibrations... Right now the legislation allows virtually anything, if I read it correctly, to attract violation or even a publication of the name of the retailer. Obviously, this has been cited as a great concern for a number of retailers. They suggest, and again you've heard it many times, that there are many things that cause a meter to go out of whack and beyond the tolerance of calibration, but it is not within their control.

So you have a situation where you would want to mandate to ensure accuracy and whether they do it or not. I think it would be incumbent on us to perhaps recommend a sliding scale so in fact there is compliance. This is, after all, the *raison d'être* of your legislation. Why would you allow a two-year lassitude when you could use a sliding scale that takes into consideration the various types of pumps, the ages of the pumps, what the pump is putting through, and the different qualities of gasoline, which might have an impact? Why would we not consider that?

I understand the international standards. I notice that *Option consommateurs* in its 2003 report suggested that you also adopt an international standard in measurements. I believe they referred to it as NIST. You don't do that here. I think you have subjected it for years to the National Research Council. I have no difficulty with that. I'm suggesting that if we're going to trot out the international standard, we also should be doing it here, in that the consideration of a sliding scale is something...

Was it suggested in your deliberations when you were dealing with retailers? Did any of them suggest a sliding scale whatsoever?

• (1035)

Mr. Alan Johnston: To the best of my knowledge, no, they did not. We're not aware of any country that does it through a sliding scale on throughput. As my colleague Mr. Vinet said, we think that would be extremely difficult to administer, both from a cost perspective and from an administrative perspective, because some gas stations might need to be checked every month and some wouldn't be checked for ten years. We'd have to look at the sliding scale. We don't think it would be equitable across the country based on throughput. We believe they would have the ability to have their pumps checked more often. As I said earlier, if they're giving away product, it affects their profit margin.

Hon. Dan McTeague: You can't use a standard and pick it out of air and say it's every two years and if you're out of calibration within that two years you're going to be caught. Obviously we should be providing an indication to suggest... We haven't heard from Gillbarco or Tokheim or Dresser Wayne. It's unfortunate that we haven't brought them here as witnesses, whether they've been offered and declined. We're dealing with a lot of very important, pithy information that is going to require us to make sure we get this widget right. Considering that we pay 3¢ a litre above world prices for fuel, considering the skew as a result of temperature compensation, and all those things set aside, which have a far more meaningful impact on consumers, if the intent of the legislation is to provide consumers with a guarantee of a modicum of accuracy, regardless of cost, I think the sliding scale is something we ought to consider.

Now, having said that, has my question of sliding scale ever been discussed among yourselves up until now?

Mr. Alan Johnston: I certainly haven't discussed it. But I just want to make it clear, when you say we pick the period of time out of the air, that we did not pick it out of the air.

Hon. Dan McTeague: Oh, the two years.

Mr. Alan Johnston: The two years is not picked out of the air. We did this based on discussions, based on previous data and that kind of thing.

Hon. Dan McTeague: The reason I pushed that point, Mr. Johnston, is that if you look at—and you've asked for and I think you'll receive—most oil companies trading in Canada, you'll see that they have contractual obligations to ensure that accuracy is done on a more frequent basis and that accuracy is within a certain tolerance, both of which well exceed what you are proposing as an outside minimal standard.

I would strongly urge you to consider that and speak to the stakeholders and key players on the other side of this to give assurances as to whether it is in fact feasible to do this.

Chair, I have three requests. So do we go on to...?

The Chair: Three requests? Go ahead and make your requests.

Hon. Dan McTeague: Would it be possible to get—I think Mr. Garneau has asked this, and I think you've alluded to it—the raw inspection data that led to the conclusions you've made?

The Chair: Yes, we will.

• (1040)

Hon. Dan McTeague: Two, would it be possible to provide to the committee the procedure for testing pump accuracy?

Would it also be possible to provide us with the complete methodology for the \$20 million claim Monsieur Vinet has made?

Finally, can we get the draft regulations?

The Chair: Thank you, Mr. McTeague.

I ask Mr. Johnston if he could have his group submit the information to the clerk. We'll make sure the analyst gets it distributed to all members of the committee.

Before we finish, I just have one question. This is likely our last meeting for the spring session of Parliament. Is it the wish of the members of committee to go clause by clause at our first meeting when we return in September? If that's the case, I will book the meeting as such when we return in September. We will send out the notice weeks before so you can get your legislative amendments in. When we come back in September we can go clause by clause.

Mr. McTeague.

Hon. Dan McTeague: I would ask for one steering committee meeting, at least, before that. I don't know what these four requests that I've made are going to reveal. It may very well be that Mr. Lake, myself, my party, and other parties will say maybe there are grounds for modifications so that it doesn't come as a surprise at clause-by-clause.

Mr. Brian Masse: I'd say the same thing, that we should have a steering committee meeting.

The Chair: Thank you.

I wish you and all committee members a good summer.

[*Translation*]

Mr. Cotton, Mr. Vinet, Mr. Johnston and Ms. Roussy, thank you
for your testimony.

The meeting is adjourned.

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