

degree of independence. The first of these relates to the appointment and role of the Director of Investigation required by Clause 9 of the TAIB draft Act. The clause is strangely silent on the question of who appoints the director. It should be clear that it is the Board for otherwise independence of the Board is directly threatened. This threat is all the more serious when it is considered that the director has the exclusive authority to direct the conduct of investigations by the Board.

• (1140)

Two highly respected legal opinions recommended strongly that the directors of investigation be appointed by the Board so as to establish the Board's ultimate independence in its relationship with the investigative division.

The second recommendation relates to conferring powers or authority on the director in a manner that would have unduly restricted the Board's activities. The Canadian Bar Association summarized it by saying that the director being appointed by the board is a mark of independence showing that a tribunal controls its own procedures. However, the Government of Canada saw fit to do otherwise in total opposition to the opinions of a Supreme Court judge and the Canadian Bar Association, two very highly respected sources of opinion. Instead of adopting these recommendations and granting the power to appoint the directors of investigation to the Board, the Government opted for the *status quo*.

I will suffer the House to listen to Clause 9 of the TAIB Bill as introduced on July 8, 1988, because I think it is that important. Clause 9(1) provides that such employees as are necessary for the proper conduct of the work of the Board, including investigators shall, be appointed in accordance with the Public Service Employment Act. If a conflict of interest would not thereby be created, the chairman may engage on a temporary basis the services of persons having technical or specialized knowledge to assist the Board in carrying out its duties under this Act and may pay them such remuneration and expenses as the Board, with the approval of Treasury Board, may fix. In this clause as it is drafted, the board does not have the power to appoint the directors of investigation. The Public Service Employment Act confers this authority upon the chairman.

Clause 9(2) also confers upon the chairman the authority to appoint any additional staff as required. Both Clause 9(1) and Clause 9(2) are diametrically

### *Transportation Accident Investigation Board*

opposed to the recommendations of Mr. Justice Sopinka and the Canadian Bar Association. Why has the Government taken that route?

Why would the Government wish to restrict the activities of a board being established for the purpose of maximizing its independence? Why maintain a clause within a Bill that has proven to have contributed to widespread dissension because the director of investigation, supported by the chairman, has withheld key evidence from the Board, thereby seriously restricting its ability to report and recommend safety measures? Is any board in Canada truly independent when staff not only control the procedures but in fact set the agenda? The Canadian Aviation Safety Board has been plagued by this situation for some time and there is no reason whatsoever to believe that the new TAIB will not be similarly affected.

Mr. Justice Sopinka recommended that Clause 9(2) be redrafted by substituting "board" in place of "chairman" in the second line in order to conform with the Public Service Employment Act and the Financial Administration Act. Clause 9(1) remains the same, but as pointed out above, the chairman acts subject to the limitations of Clause 5. Without doubt, had these recommendations been incorporated into the TAIB Bill, the new Board would have had full authority over its staff and would have functioned as a truly independent board of directors.

The independence of the Board from Transport Canada is now in jeopardy because of the following: first, the observer status. Clause 23(2)(a) of the TAIB Bill allows the Minister of Transport to designate an observer at any investigation of any transportation occurrence. This provision recognizes that the Minister of Transport (Mr. B. Bouchard) has the authority to designate an observer at any time for any occurrence, an authority which no other party has. The question is, does this erode in any way the independence of the Board. I believe it does.

Mr. Justice Sopinka concluded that the Board's investigators would not be biased by the presence of an observer designated by the Minister. The Canadian Bar Association did not view this in the same light. The mere existence of the preferred status is undesirable and indeed unnecessary, it says. The Canadian Bar Association felt that because Clause 23(3) empowered the Board to remove an observer and therefore the Minister's representative, why should it not be simply empow-