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**EVIDENCE**

**Tuesday, April 1, 2008**

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**Chair**

**Mr. Mervin Tweed**

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## Standing Committee on Transport, Infrastructure and Communities

Tuesday, April 1, 2008

• (1110)

[English]

**The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):** Good morning, and welcome, everyone, to meeting number 18 of the Standing Committee on Transport, Infrastructure and Communities, resuming, pursuant to Standing Order 108(2), the study on rail safety in Canada.

Joining us today from the Department of Transport is Mr. Marc Grégoire, the assistant deputy minister for safety and security, and Luc Bourdon, director general of rail safety.

Good morning, and thank you for joining us. I think you know the routine. We'll expect a brief presentation and then we'll go to questions.

Monsieur Grégoire.

**Mr. Marc Grégoire (Assistant Deputy Minister, Safety and Security, Department of Transport):** Mr. Chair, we'll keep it short this time.

I'm pleased to be here today to discuss Transport Canada's action relating to the Railway Safety Act review report. I am joined by Luc Bourdon, our director general of rail safety.

[Translation]

Transport Canada is supportive in general of the recommendations contained in the Railway Safety Act review report. We are taking the report seriously and are taking decisive actions, based on the report's recommendations, to advance rail safety in Canada.

[English]

A key recommendation from the report was to revitalize the railway safety consultative process. The minister has already taken the first step in implementing this key deliverable by giving a mandate to the newly created advisory council on railway safety.

The group will be vital to maintaining a solid and productive relationship between Transport Canada and its stakeholders to address future directions in rail safety, rule making, regulation, policy, and other strategic issues. The terms of reference for the advisory council have already been drafted, and we have shared a copy of these with you today.

The group's membership is currently being finalized and will include representatives from Transport Canada, the industry, the shippers, the suppliers, other levels of government, labour, and the public. The advisory council will hold its first meeting on May 2, 2008, in Ottawa.

The minister has also tasked a joint Transport Canada and industry steering committee to develop an action plan to address the panel's recommendations. The steering committee, which has already met three times, is led jointly by me and Mr. Cliff Mackay, president and CEO of the Railway Association of Canada. The other members include Luc Bourdon and Mike Lowenger, vice-president of operations and regulatory affairs, Railway Association of Canada. Secretariat services are provided by Transport Canada.

[Translation]

Since many of the Panel's recommendations are general and do not lay out specific strategies, the steering committee will task working groups to analyse the recommendations and determine the best way to implement them. Some of the recommendations relate specifically to Transport Canada, others relate to the industry, while still others pertain jointly to both Transport Canada and the industry. The development of the action plan will be a priority for us in the coming months.

A number of the recommendations also require that legislative amendments be implemented. We are committed to moving quickly the necessary proposed legislative amendments for consideration by the Cabinet this year. For this reason, we look forward to receiving your own report and any recommendations that you may wish to suggest before summer. We would then be able to consider these in the development of the proposed legislative amendments.

[English]

I would like to mention briefly two particular issues of interest from the panel's report: the safety management system and Transport Canada's regulatory oversight program.

Safety management system requirements were added to the Railway Safety Act in 1999, and the safety management system regulations for rail came into force on March 31, 2001, exactly seven years ago. The safety management system program was developed by Transport Canada's headquarters, with each of the five departmental regions being provided with two additional persons to assume responsibility for program delivery in their respective regions.

The implementation of safety management system regulations complements Transport Canada's existing regulatory oversight program. Furthermore, a risk-based integrated rail safety oversight model is being implemented at this point in time and offers considerable promise for establishing regulatory priorities and coordinating safety oversight activities.

[Translation]

Since we started implementing the Safety Management System, Transport Canada has continued to improve its Safety Management System oversight. We continue to move from global audits to more focused audits of companies. Audits of national railways are fully integrated across all Transport Canada regions and we use a risk-based business planning approach to determine our priorities. As well, Transport Canada continues to work with rail operators to improve compliance with the Railway Safety Management System Regulations.

Transport Canada is supportive of the Panel's recommendation to develop additional tools to help railway companies measure their progress in the Safety Management System implementation.

•(1115)

[English]

It is important to point out that the panel's recommendations do not negate Transport Canada's regulatory oversight program. For instance, the department has a robust monitoring program to inspect railway infrastructure, equipment, and operations to determine compliance with established rules and regulations.

Inspections continue to be an important component of Transport Canada's regulatory oversight and work hand in hand with the audits required under the safety management system. Audit results, for instance, can help us determine where best to focus our inspection efforts.

[Translation]

As well, Transport Canada inspectors can issue Notices and Orders that prescribe a specific action a railway must take to address an immediate threat to safety. Transport Canada also has a range of enforcement tools, including prosecution, and takes immediate enforcement action when non-compliance with existing rules and regulations is found.

[English]

Thank you. It will now be our pleasure to answer your questions, if you have any.

**The Chair:** Thank you. I'm sure there will be a few.

Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Thank you, Mr. Grégoire.

A couple of the questions I have relate to the presentation from Mr. Lewis. He and his panel made five recommendations on governance issues, and the common thread within them is regional inconsistencies. In particular, he made reference to the Atlantic region as having "the best 'on the ground in the region' approach and sense of safety cultures and safety management systems". I'm wondering whether you have noted similar inconsistencies across Canada and how you will you address those recommendations with respect to dealing with those inconsistencies.

**Mr. Marc Grégoire:** I will let Luc answer that one.

We have a quality assurance program to ensure that we have consistency between regions, but human beings being human beings, that brings some differences.

I will let Luc answer on the details.

**Mr. Don Bell:** Luc, maybe I can just throw a second one in that you can incorporate.

When we looked at the reports we had before us, we noted—and it was part of the reason for us, as a committee, to get started on this—the number of derailments and rail incidents occurring in British Columbia in particular. They are across Canada, but B.C. saw a particular spike after the takeover by CN of B.C. Rail. In the report, there were references suggesting that it appeared they had "not applied themselves", I think was the phrase Mr. Lewis used, to the difficulties of operating a railroad in mountainous conditions. I had heard reference to their using what they call "water grade" GOIs to B.C., therefore again raising a regional inconsistency question.

Could you address that?

**Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport):** I'll first answer your first question.

Unfortunately, the report doesn't talk about the strategic plan that was developed by Transport Canada's rail safety directorate in 2005. I don't know why, because it was presented to the panel.

We did some work prior to doing that strategic plan in 2005, and one of the things we did with the industry and with the union was an environmental scan to try to find out where our deficiencies were, trying to focus our plan not only on rail safety but as well on being able to address our internal problems.

The thing that came number one on the list of everyone was inconsistency between all the regions. Another thing that came up at that time was the lack of integration of our program. Another one was the absence of data that we lacked at the time, and another was the resistance to change that we had from our own people.

So we put our plan together. Our plan—before I get into some of the details of the plan—was presented to the railways. We were invited by the Railway Association of Canada to present our plan to all of their members, so we presented it there. After that, some of the railways called us to make presentations to their own management teams, and every year since—I believe it was on October 2, 2006, and May 14, 2007—I have been invited to the Railway Association of Canada to bring everybody up to speed on our plan.

Within that plan, what we've done to improve consistency is implement a quality safety management system as part of rail safety. In that system, there's a series of procedures that we're developing within business processes, in order to standardize everything we do.

We created a safety council wherein all the regions and headquarters are represented. We approve each of those business processes so that everybody understands them clearly, and they become the procedures that everybody will have to follow. We have over 70 of them to do; we are probably one-third done by now. That was one of the tools we've developed to address our inconsistency, to standardize our practice.

We've also done an integration of all our programs into SMS. We don't even call these safety management system audits any more; we call them integrated audits. SMS has really become, since 2005, the cornerstone of our program. Although the report makes it a suggestion that we should do this, it has been done, and we are working on it right now.

There's no doubt that with the implementation of SMS, we have resistance to change within our own organization, and we're the first to admit it; the railway will probably admit it as well. A lot of our people who were used to do inspection audits are a lot more rigorous; they take a lot more time. It takes a while to convert all our people to doing audits, but it's getting better.

To give you an example, last year we did 131 comprehensive audits, seven high-level audits, and well over 2,000 inspections.

So there's an improvement. I don't know whether that answers your question with respect to consistency, but we're really working on it.

• (1120)

**Mr. Don Bell:** That refers back, I presume, then, to the problems that related to British Columbia.

**Mr. Luc Bourdon:** In British Columbia, we added three more inspectors to cover the B.C. Rail territory when CN took it over.

**Mr. Don Bell:** During their testimony to us, rail workers talked about the problems with fatigue management. Clearly, there seems to have been an attitudinal approach by the railways that was not cooperative in recognizing it.

The accidents in the States, the head-on collision as a result of fatigue management—I think the most serious one, Hinton, was fatigue management.... Can you tell me what you're recommending by way of changes? How would you address that issue?

**Mr. Luc Bourdon:** We reviewed the work-rest rule with the industry in 2003-04 to have a new work-rest rule in place in 2005. It's far better than the one they had before, but there are still some improvements that probably need to be made with respect to crew calling. The problem is not really while they're on the train; it's what happens before—the rest, and rest after—that has probably to be addressed.

**Mr. Don Bell:** That affects what happens while they're on the train.

**Mr. Luc Bourdon:** Yes; then unfortunately things happen while they're out there. But I know that TSB is also looking into it, so definitely we'll have to review the work-rest rules again.

**Mr. Don Bell:** Do I still have time?

**The Chair:** You have half a minute.

**Mr. Don Bell:** Thank you.

The third area that I can recall from the discussions concerned the comparisons, in the testimony we had and in references in the report, and the accuracy or the base of data that was being used in comparisons between the U.S. system and the Canadian system.

I am wondering what it is you're going to do to improve that system so that there is consistency not only across Canada but across the U.S. and Canada where we have the railways going both ways.

My suggestion to you—and I'd like you to comment on it—is to wonder whether we can take the best of both. Rather than our saying we should adopt the U.S. system because it makes it easier, where we have a higher standard we should try to get the highest standard from both, and where our system previously wasn't the highest, we should be improving it to the U.S. standard, if that was higher.

Would you agree with that?

**Mr. Luc Bourdon:** I think the panel was clear in the report that more data are better than less data. As you've probably seen in the report, when you look at the FRA reportable accident, there are about 8% to 9% of all TSB reportables. I think the system we have right now provides a lot more information than the U.S. one. So I think that trying to get the best of both.... I think we may have the best of both right now. However, that doesn't mean it can't be improved, and as part of the consultative process we've put in place to address the recommendation of the panel's report, there will be a team focusing on data collection with industry members and the government and TSB to look at whether we can improve, whether we can expand. So that will be addressed.

• (1125)

**The Chair:** Monsieur Grégoire.

**Mr. Marc Grégoire:** Perhaps I may just add something on that one.

Luc mentioned a team. This is a working group that will be working under the steering committee that I described. Since most of the safety data that we gather here in Canada is done by TSB, the Transportation Safety Board, of course we have to sit and talk with them to see if they want to gather more, and if not, who should gather it. Clearly we don't want to duplicate the gathering of data between the Transportation Safety Board and Transport Canada.

**The Chair:** Monsieur Laframboise.

[Translation]

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

I'm worried, Mr. Grégoire. As it was, I wasn't sold on the idea of a safety management system for the aviation industry...

**Mr. Marc Grégoire:** You supported the proposal.

**Mr. Mario Laframboise:** Yes, because you managed to convince us that the system would work for the railway industry. Now I just have to trust Mr. Lewis. You appointed him. Everyone believed that he was an expert, or at least the Conservatives did.

Mr. Lewis had this to say about safety management systems when he appeared before the committee:

Nobody has done a perfect job of:

Explaining how SMS are supposed to work to employees;

Making SMS work for those involved.

Similarly, TC has failed to maximize this new approach due to inconsistent implementation across the various TC regions and insufficient resources.

These words amount more or less to an admission that SMS is a failure. Regardless, according to the TSB findings, more main track derailments occurred in 2007 than in 2006. According to the report, main track derailments are the most serious and cause the greatest amount of damage.

I would like to agree with you, but you're telling me today that the Advisory Council on Railway Safety will resolve the problem.

**Mr. Marc Grégoire:** The Advisory Council on Railway Safety will not resolve SMS issues. It was set up to provide a communications link between all stakeholders. The SMS concept represents a profound cultural shift within the industry and requires...

**Mr. Mario Laframboise:** But safety management systems have been in place since 2001.

**Mr. Marc Grégoire:** Yes, and clearly, it will take a few more years yet, as we have noted. Several years ago, a number of railway company audits were done. The observation made at the time was that a cultural shift had not yet taken place.

Luc told you that our employees were still showing some resistance. This is a major change. As I have explained to the committee on several occasions, whether it be in the case of air, marine or rail transportation, we are firmly convinced that in the long run, implementation of SMS will improve safety levels in Canada. Once again, the Panel made this observation.

Is implementation of SMS proceeding smoothly? No, it is not. Are problems being encountered? Yes, you listed them. We have much work to do over the long term.

**Mr. Mario Laframboise:** Except that you were always told that there were not enough employees to do inspections and follow-ups. Mr. Lewis alluded in his presentation to a shortage of sufficient resources. That is what he said. Therefore, you will need to stop playing the government's game, admit to us that you are short on resources and ask the committee to help you. We need to get down to brass tacks.

**Mr. Marc Grégoire:** Generally speaking, for years now, if managers wanted additional resources, they put in a request to Cabinet, not to the committee. The Minister of Finance establishes the budgets once a year and additional resources are obtained through the budgeting process.

In terms of our resources, I have mentioned to you several times that we endeavour to make the best possible use of our resources. You stressed at length the funding to the air transportation sector. You have demanded from us a commitment that we not transfer resources to other areas. The last time I was here, a number of committee members pointed out that not enough money was earmarked for the protection of navigable waters.

The level of activity in the rail sector has increased significantly. At the same time, the number of accidents has also increased, as we observed in 2005 and in previous years. In light of this situation, the

Panel concluded that more resources needed to be allocated to railway safety. I said at the outset that we endorsed the Panel's recommendations. So then, we are admitting de facto that we will likely need to invest additional money in the rail sector. We have already started to do that this year by transferring additional funds to this envelope. Over the next few months, we will be looking at what additional steps we can take.

• (1130)

**Mr. Mario Laframboise:** My second question is for Mr. Bourdon.

We have observed a lack of consistency from one region to another. Exactly where do things stand in Quebec on this front?

**Mr. Luc Bourdon:** As I explained, we are in the process of standardizing all of our practices. I think there has been a clear improvement in the area of program delivery. Unlike what was happening three years ago, we now meet with the five regional representatives to develop a national railway action plan.

**Mr. Mario Laframboise:** The report was produced in November 2007. It maintained that there were inconsistencies from region to region. Were there problems in Quebec?

**Mr. Luc Bourdon:** Not as far as we were concerned. We have a solid team in Quebec.

**Mr. Marc Grégoire:** It is a well trained team. Luc headed up the team for several years.

**Mr. Mario Laframboise:** However, that is not what the report says.

**Mr. Luc Bourdon:** I do not think the report singles out Quebec or any one region of ours in particular.

**Mr. Mario Laframboise:** When he appeared before us, Mr. Lewis noted that Transport Canada had "failed to maximize this new approach due to inconsistent implementation across the various TC regions [...]".

**Mr. Luc Bourdon:** As far as the SMS concept is concerned, you have to remember that we were the first to implement this approach. Certainly we were the first ones in North America to apply SMS to the railway sector. There was no model on which to base our actions. We learned on the fly and from the SMS philosophy.

Earlier, Mr. Grégoire observed that during the SMS implementation phase, the number of rail accidents and the volume of rail traffic had increased. Before we can rely strictly on an SMS system, we must be sufficiently certain that the audit work being done accurately reflects the current state of affairs within the sector.

In light of increased traffic volume and the higher number of accidents, we were forced to assign people who normally would have been handling SMS to inspection duties. We had no choice in this matter. Therefore, we were unable to devote all of the attention we would have wanted to SMS during the development phase.

**Mr. Mario Laframboise:** Would that explain the inconsistencies from region to region?

**Mr. Luc Bourdon:** It is important to be clear about two things. First, as part of the national railway audit process which is coordinated by head office, a regional team leader who reports to me is appointed for the duration of the audit. Regional representatives make up the rest of the team. Practices are consistent in this case, whether CN, CP or VIA are involved. Depending on the size of the railway in a particular region, an application may be a little less consistent.

**Mr. Mario Laframboise:** And in which region would practices be less consistent?

**Mr. Luc Bourdon:** I couldn't tell you because it comes down to interpretation and subjectivity. The person on site, or the TC representative, may have a relationship of some kind with a specific person from the railway company. Essentially we are talking about human relations. When I ask railway officials if they have any major problems with Transport Canada, they tell me that they really do not, even though one or two inspectors may occasionally be guilty of being overly zealous. Generally speaking, I do not receive any complaints about how our programs are applied.

[English]

**The Chair:** Mr. Masse.

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

Thank you, gentlemen, for meeting with us today.

With regard to safety management systems, in your testimony you mentioned you've run into some cultural problems with regard to changing the direction you want to go in. How much more time are you going to allocate, or resources, to actually change these cultural problems? That's pretty systemic if you have that situation. Maybe you can kind of highlight where you think you might be in terms of grading yourself right now, and then how far off you think you are from making a major step forward. Or do you have to then look at the fact that there's an unwillingness to change here?

• (1135)

**Mr. Marc Grégoire:** Well, I don't think there's an unwillingness to change. We said that there is resistance to change. How much time are we going to give ourselves? If we can count that in years, certainly before the culture is implemented in the department and in the industry in all modes, we're talking years. So whether it be three years, five years, I don't know, but it's a long journey that we have started.

We started this journey in 1995, in the mid-nineties, at which point we said that given the traffic increase we're seeing now in all modes of transportation, if we keep doing business in the same way we're going to have to add inspectors as the traffic increases, and that's going to become unmanageable, given the huge traffic increase that we have seen.

Furthermore, we had reached some kind of a plateau where no matter what we were doing the old-fashioned way we were not able to reduce the rates. So we consulted a bunch of experts, who eventually convinced us—and when I say us, I am talking about management and many people and experts in Transport Canada—that we needed to look at things from another perspective. Safety management systems had been implemented in the chemistry industry with very big success, so we said we would try that here,

and we became the leader in rail and in aviation. In aviation now, as you have seen, the ICAO has adopted SMS as the way forward for all countries. There is no similar organization for rail, but we think this is the way to go.

If I can talk about the challenges we have internally, we're asking people to do a more difficult job than the job they were doing before. It's easier to go on the rail and bang on it or to kick tires, so to speak, and to fill a checklist for inspection than it is to do a safety audit into which you have to think far more and you have to write and you have to make assessments. That's where the difficulty in the change of culture lies in aviation and rail now. But the direction has been set and has gone through four ministers and a whole bunch of managers in the department. We're determined, but we can't expect fantastic results tomorrow. It's going to take years.

**Mr. Brian Masse:** Yes, it's been over ten years now.

With regard to other things that could be done in the meantime, ideas have been suggested, such as giving new powers to safety inspector officers, like the ability to fine or park railcars that are not meeting standards. Wouldn't that be something that would at least provide some other degree of protection from problems, having that specific on-site expertise, and repercussions should they be warranted?

**Mr. Marc Grégoire:** We have every intention of keeping the expertise that we have in the department and continuing to renew it over the years. The panel has made a number of recommendations in that regard. There's a recommendation, for instance, to enlarge the enforcement tools basket that we have, and I firmly believe that we should have something similar to what we have in the other pieces of legislation. The one that was reviewed most recently was the Aeronautics Act, under which you have seen significant increases in monetary penalties and other penalties that we can impose. We don't have those tools in the Railway Safety Act.

So one of our proposals is certainly to include the monetary penalty scheme, as we have done in other pieces of legislation, the Aeronautics Act or the Canada Shipping Act, 2001.

**Mr. Brian Masse:** That is one of the things that could be done.

**Mr. Luc Bourdon:** I just want to add one thing.

**Mr. Brian Masse:** Sure.

**Mr. Luc Bourdon:** They already have the power to stop equipment or trains from running. Does that already exist?

**Mr. Brian Masse:** The question would be whether it's exercised enough. That's where I hear some disagreement.

I want to move to the terms of reference for the advisory council. Thank you for tabling that today in front of us.

In general, I've seen many panels and working groups like this, but what I'm really worried about is the accountability of the work that comes out of it and whether it has any enforcement mechanisms or ability to move itself up the food chain, so to speak.

It's good to see that the unions are recognized here. I don't think the panel, in their report, recognized the input from the unions. I think that's very much a disservice, given the fact that they work every single day on these things. Nonetheless, at least their members are here.

But at the end of the day, if a working group is created over an issue—for example, derailments—and they come forth with a series of recommendations or a report and it gets back to the main body, what really can the main body then do with that report that has been worked on? They're only meeting twice a year by mandate. They can meet more often.

Potentially, on the surface it appears that there could be some good work that would come out of here. My fear relates to similar panels, such as the CAPC panel for automotive and a series of others, where the recommendations basically get posted on a website and sit for many, many months and you get just an occasional House of Commons question based upon the work that a panel has done and it has just basically been posted.

So perhaps you can tell us what type of teeth the work of this panel could actually have.

• (1140)

**Mr. Marc Grégoire:** This is not a panel, this is an advisory council, and it has no teeth whatsoever. The intent is not to have this as a decisive or decision-making body. That is not what it is. It's a consultative body.

Will Luc and I be interested in what comes out of it? Of course. As you have noticed there, I will chair this council, starting on May 2. I'm very interested in finding ways of improving railway safety by any means and matter.

We had something before. It wasn't working very well because there were too many people participating. So we thought, for this committee to be productive, we needed to limit it to a manageable number, which is around 20 or less. That is what we have now.

The thing we have put in the mandate is any safety issue that needs to be addressed and any regulatory proposals. So a regulatory proposal that the department could make would go through this committee for consultation. Any rule that affects the nation, any national rule by the railway industry, would go through this committee, and anything else that the members of the committee would bring. But the goal is to improve safety.

As to what we will do with the recommendations, I am the minister's adviser on a day-to-day basis. So if I chair this and I have recommendations on specific things to do, of course I will have to report and make a recommendation to the minister.

We have another similar committee that works very well. We kind of modelled the membership and the number of people on the transportation of dangerous goods advisory council. Over the years, the TDG council has made a number of recommendations that actually came out very positively in regulatory improvements, for instance. So we are very optimistic as to the work that would come out of this council.

**The Chair:** Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair.

Thank you to our witnesses.

The railway panel commissioned a pretty comprehensive study. We've heard from Mr. Lewis in terms of his thoughts crystallizing this broad study down to something a little more functional for us to assess and to begin to make decisions on.

I posed a question. I presume you are familiar with the report, but I'll draw your attention to pages 73 and 74 of the report, where he talks about the continuum of a safety culture, the progression toward the full implementation of SMS, which would be stage five.

I asked Mr. Lewis to evaluate two things: at what stage are the railway companies, the industry itself—I think he indicated somewhere around stage two, maybe stage three—and as well, where the regulator is at, which is Transport Canada. I think the answer was about the same. I think kudos were given to VIA Rail, which he said was beyond that, maybe around stage four. It is much further along than the rest of the industry and the regulator.

I would like you to respond to Mr. Lewis's assessment. Where do you see yourself currently with respect to this continuum? What stage do you find yourself at, as the regulator? Where were you at two or three years ago? Have you made some progress? Were you stage two before and now you're stage three? Were you stage one before and now you're stage two? I'd like an honest assessment. I'd like you to respond to Mr. Lewis, first of all.

• (1145)

**Mr. Luc Bourdon:** To answer your question, I think we are progressing. As to where we are on a scale of five, I would agree, we're probably between three and four right now. We're not there yet, but I think there's been major improvement. There were growing pains. We had to learn. We had to work with our people, and through our risk-based approach that was implemented when we integrated all our programs into SMS I think we've made some great improvements. And we're seeing from our own people that we're getting a better level of buy-in from everyone.

**Mr. Jeff Watson:** So your assessment is a little higher than Mr. Lewis's was.

**Mr. Luc Bourdon:** Maybe a bit higher, yes. We're optimistic.

**Mr. Jeff Watson:** Mr. Laframboise earlier said that what he sees when he looks at this is a failure of SMS. I'm not sure I agree with that. In fact, where SMS is being implemented it's being successful. Even Mr. Lewis had said. "Let's take VIA Rail, for example, where they're much further along". We can look at their safety record, for example, and see that in fact SMS can work. There are certain regions that are further along as well. So where it's actually being done it's being successful. It's in the areas where we've not gotten to full implementation where we're continuing to see the problems.

I have a question with respect to some of the regional variations with respect to the regulator. Mr. Lewis had singled out the Atlantic region as being one of the more successful regions with respect to the regulator. What lessons are you transferring from that region to the other regions where we're not seeing the same success? What can we learn from the Atlantic region? What's actually working there that could be used to bring up the standard in other regions?



**Mr. Luc Bourdon:** Actually I'd say that most of the successes in the Atlantic region are being carried over in other regions by those working groups that we have in place, whereas we bring mostly the people from the Atlantic region to share their successes with the others.

**Mr. Jeff Watson:** What successes? Where are they succeeding where others are failing? What lessons are you bringing over? I'm talking about the process of bringing it over. What are you bringing over? What's being translated?

**Mr. Luc Bourdon:** Mainly with their approach to SMS and the way they dealt with railways....

You also have to consider that from region to region there are different numbers of railways. Whereas some region might have five or six railways, you have other regions that may have, with the provincial roadwork that they're doing, way over twenty. So that can cloud a bit the implementation of SMS as well.

**Mr. Jeff Watson:** You've recognized internal problems with consistency and standardizing your processes.

You said about a third of this process is done. When do you expect to have the other two-thirds completed?

**Mr. Luc Bourdon:** What do you mean by a third is done?

**Mr. Jeff Watson:** You had mentioned—

**Mr. Luc Bourdon:** No, the third I talked about was the quality management process and all the procedures that are being.... As far as SMS is concerned, as I said, we're probably between a three and a four right now. It's getting better by changing the focus. When we started at the beginning with what we called at the time global audits, we felt they were very time consuming, and probably the results at the end of the day were not what we expected. Some areas of the railway, we already knew they were doing a very good job. So we used the risk-based approach lately, whereby we're focusing where we believe there are problems, and those are the areas we audit. So they're more focused and they are now called integrated audits, and the quality is way better.

**Mr. Jeff Watson:** The resistance to change within Transport Canada, you've indicated the movement from inspection to audit as part of that resistance to change. I want to step back for a second, though, and examine it in terms of getting to a culture of safety in SMS. In which groups are you finding resistance, and what type of resistance are you finding within them? For example, in the railways themselves, is there resistance there to this, and where? Is it within the civil service, within Transport Canada? Is it with unions? Give us a sense of where the obstacles are in resisting that kind of change.

• (1150)

**Mr. Luc Bourdon:** In terms of resistance to change, for the most part I think it was on both sides. It was us as well as the railway, because I think we had a lot to learn about SMS. As far as the unions are concerned, I think they were very supportive of SMS; however, the complaint that we've heard constantly was that they felt they were not involved enough in SMS. You have people within the railway, as well as within Transport Canada, who feel it's way too paper intensive. It may be they are more of the culture that believes inspection will do it all for us. They've been doing that for 20 to 25 years. So I think it's on both sides. As we're getting new staff on

board, we're changing the culture slowly at the railway as well as the regulator.

**Mr. Marc Grégoire:** If I may add something, Mr. Chair, on that one, the experience we've had about this is that most people find our speeches very interesting, but only get convinced when they see good examples. If I can go back to the aviation side for a minute, what some companies like Air Transat have seen, and it took many years, since they implemented SMS—and we hope that the railway company will follow suit—is that there is far more communication inside the company between labour and management. Labour is reporting problems before they arise, before they cost. So there's a lot of cost saving that is possible within the company. So not only are there safety benefits to going SMS, but as proven by more than one company, there are actually cost savings; therefore there are real financial benefits to going there, because problems and issues are discussed and resolved before they generate cost, which was not the old way of doing things. But it takes time.

**The Chair:** Thank you.

We're going to Mr. Zed, who has generously given his time to Mr. Bell.

**Mr. Don Bell:** Thank you.

Thank you, gentlemen.

I wanted to address the area of the railway safety inspectors. One of the suggestions was that their function not so much shift away from, but include an audit function as well as an inspection function, and that their title be changed to railway safety officer.

I'm curious about recommendation two, which says the Railway Safety Act should clarify that the railway safety inspectors exercise their powers under the authority of the minister. I understand they get their power under sections 27, 28, and then they issue their orders and notices under section 31. I'd heard there was a suggestion prior to this report coming out, and in a lot of the earlier discussions, that the orders and notices had to be cleared first by the deputy minister. I note the reference here that there is a proposal, or the suggestion if you read the act carefully as it exists, that there is an appeal process to the minister for an order or a notice, which is rarely used, and it's one that could be used by the railways in the process.

But I'd heard there was a suggestion that inspectors were going to have to clear their orders with Transport Canada, which seems to be a backward step, since these inspectors are on the ground. They're looking at something, they see something, they have to take action for the safety of that train, or the safety of the individuals, the workers.

I know the suggestion is that administrative penalties, which are referred to on page 59 of the report, would be applied by the minister only. They might be recommended, but they're administrative penalties. I would like to know how those administrative penalties are applied in the aviation or the other transport modes. Are they done by the minister, or are they done by some other body or person? I'm particularly interested in the suggestions for the RSIs. On page 29 there's a reference under orders and notices that they would report their decision to the director of rail safety. I guess the effort of the report was that the panel was to ultimately link it more directly to the minister, and these would all be reported to the minister but not go to the minister or the deputy minister for approval. I just want to clarify that.

In your comments on the new audit role, what additional training would you be planning for these inspectors? I presume it would require a slight shift. I'm presuming you're adding an auditor's function rather than taking away an inspector's function, but I know Mr. Lewis made reference to the fact that all their energies are focused on inspection, and they felt there was some value to having some of their energies applied to the audit function. I know these inspectors exercise their power under the authority of the minister. I'd like some comment on that. That's one question.

The second question is about the communication of policies, which is a different area. Some of the companies—CP was one good example—have a culture of safety, and it's well communicated to the employees. CN was an example where it wasn't as well communicated. There was a disconnect between the corporate intent and what was being understood.

I noted recommendation 24 talks about specifically “improving their safety management systems, including a means of involving railway employees at all levels and, where possible, through health and safety committees and representatives”. I wonder if you could comment on how you might see that coming about.

• (1155)

**Mr. Marc Grégoire:** That's all?

**Mr. Don Bell:** That's it. I have more, but in the interests of time.... Go ahead.

**Mr. Marc Grégoire:** I don't know if I wrote everything you asked, but between Luc and me, we'll try to cover most of the ground.

If I can start with the railway safety inspectors and their titles, we haven't decided yet if we're going to change their titles. What they do and what they will do in the future is changing, so they will do more audits and fewer inspections, as you mentioned. But I'll let Luc cover all the details on that one.

There's a big difference—and we've had conversations with the panel on that subject—between what's being done under the Railway Safety Act with inspectors and under the other acts. I'll cover the monetary penalties at the same time, outlining some of the differences

. If I take the Aeronautics Act, for instance, there's no power defined for inspectors per se in the act. Everywhere in the act, we talk about “the minister”—“the minister shall do”, “the minister can do”, “the minister can enter premises”, “the minister can ground an

aircraft”—but we don't talk about the inspector. We have a regulatory instrument, a delegation instrument, whereby the minister delegates his authorities through the chain of command. He delegates most of his authorities to me, and I further delegate that to the DG of civil aviation, and down the line, all the way to the inspector. We have an instrument of delegation for everybody in the department concerned with the Aeronautics Act.

Here it's different. The act itself delegates power to inspectors, so in theory you could have an inspector who will do something somewhere in the country on his own without consulting. Some of the recommendations here, when we're going to come up with an important monetary penalty scheme, or we're going to come out with a railway operating certificate, you could have theoretically an inspector who would decide to pull out a certificate without consulting anybody. This is not advisable, but in theory, under the act as it is written now, you could have this situation.

On the aviation side, we keep reminding our inspectors that the minister is a person—he exists; he has delegated his authority, but in some big cases it's highly advisable to consult him. For example, if somebody wanted to pull the certificate of Air Canada tomorrow, I think we should meet the minister and see if he really wants that inspector to take that action. What has been taken into account? What are the repercussions on the public interest? What are the repercussions on the economy of the country?

All those questions also apply to the railway industry, which is why we're interested in clarifying this aspect. The panel has not made a specific recommendation with regard to that, except the title.

• (1200)

**Mr. Don Bell:** I just wanted to clarify that we're talking orders and notices, as opposed to administrative penalties, which would be the minister's. Orders and notices are on the ground when a train is sitting there and an inspector sees something. He has to be able to make that decision right there, because that train shouldn't leave.

**Mr. Marc Grégoire:** He is, and he will continue. Inspectors in other modes do have this authority also, but it's delegated to them by the minister. Luc will cover that aspect.

As far as the monetary penalties go, the way it works in other modes is that a regulatory inspection or an audit is done. There is an investigation for which the conclusion is that there was an infringement of the rule. The rule was broken, so a monetary penalty must be given. It's not the inspector who has done the analysis who gives the fine to the company. In aviation—and again I'll let Luc explain what is being proposed for rail, but it's not there yet because we don't have it in the legislation—it's the original manager of enforcement who makes decisions on the fines. For instance, the inspector will say, “Here's what I found, and given the track record of this company, here's my recommendation. We should fine this company \$5,000.”

Then there's a process in which the company is invited to an informal meeting by the manager of enforcement, where this could be negotiated, so the company will say, "Yes, but it's my first offence. Don't be so harsh", and blah, blah, blah, and it could end up at \$4,000, in which case it ends there. If there's no deal, the person can pay an appeal to the TATC, the Transportation Appeal Tribunal of Canada, which of course would have to be the case here if we came out with monetary penalties.

That's how it's done, and we would like to say that we would like the same thing in rail, rather than reinventing a different system.

By the way, we're now starting the implementation on the marine safety side under the Canada Shipping Act, 2001. Up until now, we were only able to prosecute companies. We just had the final regulation in the *Canada Gazette*. We will be able to go ahead with monetary penalties, and it's the same thing in the marine security environment.

I'll let Luc cover the notices and orders.

**Mr. Luc Bourdon:** As far as the notices and orders are concerned, we have no intention of adding a vetting process by anyone to what the inspectors are doing. But through our quality process we've been ensuring that if the notices and orders apply nationally, they have to be written so they apply nationally, and not to the particular location where the incident or whatever occurred. It's still an immediate threat, and an immediate threat needs to be addressed on the spot. So that won't change.

On our role as inspectors versus auditors, you asked what we have done. When we started to train our people to be auditors after that was implemented in the act, nothing existed out there that was tailor-made for the railway. So we hired a consulting firm that was good at auditing, and we've trained our people to be either auditors or lead auditors.

When I said we had a certain resistance to change, people sometimes had a hard time relating what they were being taught to the rail industry. We're currently retraining all of our people. Now we have someone with our experience who has been able to map what they have with the railway industry. When Mr. Watson asked me why we felt we were probably between three and four, we're seeing now, with everybody who is being trained, that people are understanding a lot more about SMS and the audit procedures than they did before.

**The Chair:** Thank you.

Monsieur Bachand has generously donated his time to Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you.

I realize that you are comparing the air and rail sectors, but the danger in so far as the rail sector is concerned is that you are dealing with hundreds of kilometres of rail and hundreds of acres of railway yards. The following is noted with respect to railway yard spills on page 148 of the report:

We have perceived a gap between federal authorities in monitoring leakages and spills of dangerous goods and environmentally hazardous goods in railway yards. In most cases, Environment Canada expects the transportation regulator to intercede,

since it is related to train operations, while the Transport Canada railway safety inspector is not sufficiently trained or knowledgeable to assess site contamination.

That means that hundreds of railway yards located within our city limits—all railway yard sites are located within city limits because they often pre-date urban development—are contaminated to some degree. The report was released in November 2007. It is not clear who is responsible for what exactly. Environment Canada maintains that Transport Canada is responsible, while Transport Canada inspectors are not sufficiently trained to assess whether or not a site is contaminated.

That is the current state of affairs in the rail sector. I am not happy to have to call for more inspections. Certainly I want the situation to be monitored, but I also want qualified people to check to ensure that railway yard sites are not contaminated.

What are we doing? What are you doing? You have established an Advisory Council on Railway Safety to address the contamination problem. That is all well and good, but how are you dealing with the problem of contaminated railway yards?

• (1205)

**Mr. Marc Grégoire:** First of all, Mr. Laframboise, I must go back to what you initially said, namely that there are thousands of kilometres of track. I would say that there are tens of thousands of kilometres of track. There are hundreds of railway yards across the country. That is another reason for having railway companies embrace and implement the SMS concept.

Railway companies have tens of thousands of employees. Mr. Masse expressed his satisfaction at seeing unions and employees involved in this initiative. As I see it, it would be impossible to enhance safety in any significant way without having all of these individuals get involved in the process. How can we do that? By implementing safety management systems.

We will never have enough resources in terms of inspectors. According to your figures, we should have one inspector per railway yard, one inspector per train, and one inspector for 200 or 1,000 kilometres of track. That will never happen. So then, it is really important to implement safety management systems.

Very few people in my group, Safety and Security, either here in Ottawa or in the regions, are experts in soil contamination. Luc's employees, whether here or in the regions, are primarily experts in railway safety. The Transportation of Dangerous Goods Directorate is responsible for contamination problems. This group steps in when train derailments or spills of hazardous materials occur. However, Transport Canada has not focussed a great deal of energy in the past on railway yards.

You mentioned the Advisory Council. However, I would like to talk about something else I mentioned at the start of my presentation. We have established a Railway Safety Act Review Panel which is co-chaired by Transport Canada and the RAC. Under the auspices of this Panel, a series of working groups will be struck, including one to be called Proximity, Operations, Environment and Technology. The recommendations that you alluded to will be examined by this working group which will then advise the minister as to the best way to implement them. I cannot tell you right here and now what we will be doing. We don't have all of the details yet.

Would you like to add something to that, Luc?

**Mr. Luc Bourdon:** I would like to say to Mr. Laframboise that our mandate consists of ensuring the integrity and safety of railcars. Transshipment operations are not the responsibility of Rail Safety. If a spill was to occur, depending on the type of product and the quantity involved, as a rule, Environment Canada or our Transportation of Dangerous Goods Directorate would step in to handle the situation. Historically, Rail Safety has never been involved in cases of soil contamination.

• (1210)

**Mr. Mario Laframboise:** I wasn't implying that we needed to have one inspector for each railway yard. However, we read that there should be some interrelation and training. Environment Canada believes that you should be monitoring these operations, whereas you maintain that this area is the responsibility of Environment Canada or the Transportation of Dangerous Goods Directorate. The bottom line is that people lack sufficient knowledge to determine if sites are contaminated.

Let me say again that these railway yards are located in the heart of our cities. It is fine with me if you want to strike some committees, but contamination on this scale shouldn't be happening in this environmental age. Maybe 10, 15 or 20 years ago, incidents like this were more commonplace, but by November 2007, the problem should have been resolved. We need competent people to investigate these incidents.

You stated that your committee will be making some recommendations. That's all well and good, except that certain things can no longer be allowed to happen.

**Mr. Marc Grégoire:** But we are not the ones who will be cleaning up the sites. Transport Canada must arrange for the sites that it owns to be cleaned up. That goes for airports, harbours...

**Mr. Mario Laframboise:** I'm not saying that you should be the ones to do it, except that we're dealing with private property. Someone has to tell the company responsible for the spill that it must also clean up the site.

In the case of air transport, the sky is the route, whereas for rail transport, we have tracks, railway yards and so forth. People like yourself must demand that cleanup operations be carried out. Sites are contaminated and companies are shirking their responsibilities. Someone needs to tell them to carry out cleanup operations.

**Mr. Marc Grégoire:** We will discuss that with our colleagues at Environment Canada. It is not clear that Transport Canada can impose this requirement in the case of privately owned land. We will discuss this matter further and come back to it later, not in several weeks time though, but rather in a few months' time.

[English]

**The Chair:** Thank you.

Mr. Shipley.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chair.

Thank you for having the witnesses here.

**Mr. Marc Grégoire:** It looks like we have a standing offer to come here.

**Mr. Bev Shipley:** Well, it's good and quite informative, and we're moving along.

I want to go into a comment you made on the last page of your presentation: "It's important to point out that the panel's recommendations do not negate Transport Canada's regulatory oversight program". Is there a concern by some body or group that in fact the program would get negated?

**Mr. Luc Bourdon:** No, not that I know of.

**Mr. Bev Shipley:** I was wondering if that was just a statement, or was it...?

**Mr. Luc Bourdon:** I guess it's a statement, yes.

**Mr. Bev Shipley:** Oh, okay.

One of the things that has come to me, and I think the words have been well used, is that we need a "cultural change" in the safety management system. It's actually become a regime that needs to be changed to implement such a cultural change, I believe. You talked about it being a journey, and I can't disagree with that. As we look at changing a number of significant things, with the greatest number of employees we are dealing with here, I think it always is a journey, and sometimes generational things have to be turned over before these cultural changes will happen.

One of the things you talked about was a resistance to change—not an objection, but sometimes a resistance to change. I guess it's a bit in our human nature to sometimes get our backs up against change. In terms of bringing the inspections or audits together under one inspection auditor, or safety officer, I think it's called, what sort of education and training is there? What has the approach been to them, so there would be a higher level of acceptance of that responsibility?

I think you mentioned getting away from the tire-kicking part we've been accustomed to, and actually making sure—as in everything else we have to do now—that it is documented and shown, so that there's an audit portion to that inspection.

Can you just help me a little bit? How are you working towards that?

**Mr. Luc Bourdon:** One of the things we've noticed when implementing SMS is there's a tendency to resist change. I guess we're all railroaders by trade, so whether you're with the regulator or the railway, you're probably from the same blood and you take the same way. That's probably why there was resistance to change in the industry, as well as within Transport Canada.

What we're doing now is that we've recognized that, as part of an audit, we need people who are technically very strong, and also people who understand processes. What we're trying to do now is to put teams together that have all of those skills. So we may have a team leader who.... Most of our team leaders are not railroaders by trade, but people who really understand audit principles and the processes that are in place within the rail industry, or within any other rail industry. They're the ones who are responsible to map the audit, to work with the auditor and to assign people on the team exactly what they can best handle, based on the skills of the people on the team.

That's why we're seeing a shift right now, whereas before we probably believed that it was about railroads and that it should only be done by people who understood the rail industry. So now we're hiring people with different types of skills in order to be able to match the direction in which we're going, as well as in the training that we provide. As I said, our first round of training was brand-new. There was nothing out there that had a railway flavour to really tailor-make that to our industry. Now we're in the second round of training, and everybody understands a lot better what we're trying to do.

• (1215)

**Mr. Bev Shipley:** I think you've actually tagged that, because now that you're in a position where there are retirees, you're able to hire for a new regime or a new culture. But for a few years there will be a number of people who will not have that expertise or training, or the background to carry out maybe what you're asking them to do. I'm wondering what you're doing to help move them along so that they can be part of that team, and feel integrated, actually. That's the important part, that they feel integrated, and not necessarily be disciplined, that this is what you have to do. How do you bring them along to feel that, so they don't become a hindrance and in fact become a great part of a successful team?

**Mr. Luc Bourdon:** As I said, through training. In the second round of training we're really seeing an improvement in the culture with respect to SMS within Transport Canada. But as well, as I said, we're trying to find and use the people for what they're best at.

For instance, in every part of an audit you have to analyze processes that are in place, and procedures and policy, but you also need to have a component of sampling. You have to make sure that what you found in all the paperwork that was provided is actually being translated into concrete action on the ground. So people who are stronger on the technical side will be used to doing that sampling. They will be out there to assist the auditor by looking to see that on the ground everything corresponds with what we've been told and what we've found throughout the system, that there's a correlation between what we are being told, what we are being shown, and what is really applied on the ground.

So we use our people for what they are best at.

**Mr. Marc Grégoire:** I'd like to add two things to that, if you'll allow me.

First of all, we like our employees, so we don't want to kick people out because they don't have the skills. This is not our philosophy at all. We'll train them. We'll give them more training if

needed. We'll meet with them and we'll talk and we'll fix things. So that's extremely important.

The second point I want to make is a point we're making in all of the modes, whether it be in aviation or here or in others. We have no intention whatsoever of becoming the OAG or becoming auditors where we don't have subject matter experts. We will continue, as far as I can see into the future, to have subject matter experts, so there is no intention at all to back off from there. But we need a better mix of people, professional auditors or people who have skills as auditors.

**The Chair:** You have twenty seconds.

**Mr. Bev Shipley:** This is just a point of interest. You've taken out somewhere around 10,000 kilometres of rail since 1990. How does that affect the risk portion of rail safety when you look at the amount of rail service, the traffic that has been put in place? We have all this rail that has gone out, and now we have rail traffic increasing. How does that work in relation to what you're trying to prove with rail safety?

**Mr. Luc Bourdon:** We didn't see much difference. First of all, it depends on whether the rails were transferred to a federal short line or to a provincial short line. If they're transferred to a federal short line, they are still within what we do on a day-to-day basis. We assume that most of the time those rail lines came from CN or CP to short line. If the level of maintenance is the same as was done by CN and CP, we don't see any differences.

• (1220)

**Mr. Bev Shipley:** I would suggest that a lot of them just got jerked out. Many kilometres up through Ontario just disappeared.

**Mr. Luc Bourdon:** We didn't see much difference in what we do, though.

**Mr. Bev Shipley:** Okay.

**The Chair:** Thank you for that.

Mr. Volpe, in the spirit of generosity, has deferred to Mr. Bell.

**Mr. Don Bell:** I did my homework.

Thank you, Mr. Grégoire and Mr. Bourdon.

**The Chair:** I should say you have five minutes.

**Mr. Don Bell:** Thank you.

I'd like to go to a few recommendations. And I'll give you all my questions now, just in case I run beyond my time.

First, recommendation 19—I had asked this question before, only you didn't get to it—has to do with the effectiveness of local health and safety committees, which was raised as a concern. Recommendation 24, in the seventh bullet, talks about “a means of involving railway employees at all levels and, where possible, through health and safety committees and representatives”. That was identified as a weakness during the testimony we heard. Recommendation 24 also mentions that “Transport Canada and industry should work together to develop the tools”. There's a reference, in the third bullet, to a “measurement of safety culture”. We heard that there was a safety culture, but it varied from railway to railway.

I'll jump philosophically to recommendation 39, which deals with transport and follows through the safety culture, if you want to call it that, relating to dangerous goods, hazardous goods, very dangerous goods. In recommendation 38 the panel is recommending that this protocol be developed for hazardous goods not designated as dangerous goods. In recommendation 39, again, it's the same: to establish a standard of emergency response for the rail industry for dangerous goods and environmentally hazardous goods. In light of Lake Wabamun, in light of Cheakamus River, these seem to be particularly important. I'd like your comment on that.

Finally, recommendation 35 addresses the issue that I know was raised by my colleagues from the Bloc and by others—in fact, by both the NDP and the Conservatives—about the relationship with municipalities and the conflict that can occur between railways and municipal planning and development. More particularly, though, the import of that involves crossings, where the existing tracks are, and the recommendation for a five-year action plan. The recommendation here is that a five-year action plan should be developed and should include a provision for shared funding for the improvement of private crossings and for grade crossing improvements. We know that a high percentage of the reported accidents are in fact grade crossing accidents, so I would appreciate your comments on that.

**Mr. Marc Grégoire:** I can start, but I guess Luc can—

**Mr. Don Bell:** Did I speak slowly enough for you to note the questions?

**Mr. Marc Grégoire:** Oh, yes.

**Mr. Don Bell:** Thank you.

**Mr. Marc Grégoire:** I'll start with number 19. We have sat down already with our colleagues from RAC to see how we would assess and implement the various recommendations. We have basically grouped the recommendations into three clusters. The first cluster includes recommendations that will be jointly implemented or overseen by TC, RAC, and a variety of committees. The second cluster is composed of recommendations that deal with industry only, so we'll let them tell you how they will go about implementing them.

Your recommendation 19 is one of those. It states that the industry must take every measure to ensure effectiveness of the health and safety committee. That's a recommendation to the industry. I gather they are coming here later this week, so if you don't mind, I'll let them answer that question.

The third cluster contains the recommendations that will be dealt with by Transport Canada alone or lead by Transport Canada. It

doesn't mean we won't talk to people. We will consult, as we usually do, but we will lead this work.

To recommendation 24, which was your second one, you added recommendation 24-7: “a means of involving railway employees at all levels and, where possible, through health and safety committees and representatives”. This one I would link with recommendation 19, if you want, so you may want to ask the railway how they will do that, but we from transport certainly encourage that. We do encourage employee involvement in safety.

Your next recommendation was 24-3, which is the third bullet: “measurement of safety culture”. We don't have an index, but we are now redrafting our program activity architecture in the department, and as part of that we have to define a performance framework for everything we do. I guess we're going to come to the same conclusion in that respect, but there is no worldwide recognized safety index, if you want, that would be recognized by everybody.

If I can compare it with what we did in diversity, for instance, we wanted to become a very representative department in transport. We have developed a diversity strategy, but in diversity there is a recognized index, one to five, and we can specify targets of where we want to be by when. Everybody understands that, and many organizations are using the same index. So here the only thing I can tell you of what we do now is that to measure the safety culture we have and we will interview people. The only way you can measure or have a sense of the culture within a company is to interview its employees, so in a big company we can interview hundreds of employees and we can find out from those interviews if the culture is positive or negative, if the information sharing is done, and if there are reprisal actions or not. We can find that out.

But there's no tool that will give you an exact number. To go back to the previous discussions about the one, two, three, four, five, the safety culture index, if you want, this is what we may adopt in the future, but we have not at this point in time.

Next was recommendation 39, and I'll let Luc take over from here.

● (1225)

**Mr. Luc Bourdon:** As Marc has mentioned, as part of the steering committee and the working group we have put together, there's going to be a working group tasked to look into that, to see if we need a protocol and develop what we need in order to address that recommendation.

**The Chair:** Mr. Fast.

**Mr. Ed Fast (Abbotsford, CPC):** Thank you, Mr. Chair, and thank you to the witnesses.

There was a suggestion earlier here at the committee that the report proves that SMS doesn't work. But my reading of the report brings me to quite a different conclusion. The report actually says that SMS is highly desirable. In fact, recommendation 17 specifically states the high desirability of maintaining SMS and making sure it's implemented properly. That brings me to the question.

Implementation appears to be a big part of the problem here. The report actually distinguishes between organizations such as VIA Rail, CP, and CN. It speaks in glowing terms about VIA. It also speaks favourably about CP, and refers to it making great strides. But when it comes to CN it's highly critical. In fact, it refers to there being a culture of fear within CN, and that employees are afraid to report.

If we're going to get to a point where employees are reporting more often about some of the concerns they have, do we not have to address that culture of fear? I ask that because the report touches briefly on the issue of immunity, and Air Transat has adopted a provision for immunity for its employees when they report incidents. Under former Bill C-6, now Bill C-7, we're legislating that for the aviation industry.

I asked Mr. Lewis that question and didn't get a satisfactory response. So do you see imposing a legislative requirement for immunity as being helpful in moving forward? If not, why not?

• (1230)

**Mr. Marc Grégoire:** These are certainly things we will consider in the development of our recommendations in the coming months. But you have to look at all of this as a package. If we were to go the route recommended by the panel and establish an operating certificate scheme like we have in aviation, for instance, I would certainly want to push it further. I have the idea of the accountable executive, which has the same protection for employees as the one we've proposed for aviation.

SMS will only function if the culture of safety is implemented in the company, including encouraging employees to report problems without fear of reprisal. So somebody who sees something wrong, even if it's his mistake, has to be able to report this, because at the end of the day safety will be improved. But if the person reports something and is fired on the same day or the day after, what will that do? That will prevent other employees from making any other reports. That will basically shut down the communication channels.

**Mr. Ed Fast:** The evidence we heard when we were discussing Bill C-7 was that the rate of reporting safety issues increased by 400% to 500% once immunity was in place. In fact, virtually all the witnesses we had, whether they were from industry itself or the unions, spoke favourably of immunity. The only other thing the unions wanted was to go one step further and turn it into true whistle-blower protection.

Am I assuming correctly that immunity is something you would seriously consider as part of the SMS regime, and perhaps as part of legislative amendments that will come forward from your department?

**Mr. Marc Grégoire:** This is something we are discussing now, but the committee may want to make specific recommendations. Hopefully we will get these recommendations before the summer recess so we can include them in our proposal to the government.

**Mr. Luc Bourdon:** You can rest assured that every single complaint we get from employees is investigated, and we do not tell the railway who called us or who sent us a letter.

**Mr. Ed Fast:** That's understood.

**Mr. Luc Bourdon:** I know you want to go further than that.

**Mr. Ed Fast:** But I think the concern is that if there is a culture of fear within CN, you're not going to get the kind of reporting we're trying to elicit from the very employees who are on the front lines.

I have one further question. Bill C-7 could be used as a model for further legislative amendments within the rail sector. Is that something you're looking at?

**Mr. Marc Grégoire:** Absolutely. There are things we would like to copy by replacing "aviation" with "rail". The whole portion on monetary penalties, for instance, we can just duplicate. There are many things about SMS, too.

Of course, if adopted, the Aeronautics Act would be the most recent safety act to be passed in the House. We want to use every advancement and every recent thing Parliament has done. We want to implement in other modes.

**The Chair:** Thank you.

We have one last person, and then we'll open the floor for other questions. We'll have Mr. Jean.

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

Thanks for coming today.

I read a lot of the report. I was having problems sleeping, so it was excellent material for the time.

I would like to say that I thought it came up with some great recommendations. My understanding is that the department actually supports, in principle, all the recommendations of the report.

In relation to the enforcement itself, there's usually a stick and a carrot, a penalty and an incentive. Are there any incentives? Are there any rewards the department can offer? Are there any that they offer currently, instead of strictly penalties? We know of 76 enforcement orders. A minister's order was placed against CN, for instance. Are there any types of carrots that can be offered to these rails so they comply with the department?

•(1235)

**Mr. Marc Grégoire:** If a company is very safe when we audit the company, and it's an example of the culture of safety—it's perfect everywhere—what do we do? We just back off. So I guess the carrot is that you will see less of us if you have a really good safety record.

On the opposite side, if you're not good, well, you'll see more of us, and you will see monetary penalties. The monetary penalties should go, if adopted, again, through legislative change. The scheme is that they increase. You're bad once, you get something. You're bad twice, it's bigger. Then it's bigger, bigger, and bigger, until eventually, the worst thing that can happen to you is a suspension of your operating certificate.

**Mr. Brian Jean:** So not only is it an incentive, for instance, for companies to comply on the basis of their own safety record, and of course for public perception, but it is probably far more cost-effective for them to comply up front on an ongoing basis, because they don't have to worry about the paperwork with Transport Canada and ongoing safety problems.

**Mr. Marc Grégoire:** Yes.

**Mr. Brian Jean:** Did the department see any dramatic increase in the safety culture, for instance, after the 76 enforcement orders or after some of the other steps that have been taken by this government since February 2006? Has there been an assimilated change over time to a positive degree?

**Mr. Luc Bourdon:** I think, over time, yes, things are getting better, if you consider the increase in traffic. There are more and more trains. The accidents so far this year look very good. The year 2007 wasn't a bad year at all. So I think things are improving.

**Mr. Brian Jean:** Now you're talking about general accidents, all-inclusive, not main track derailments—

**Mr. Luc Bourdon:** Yes.

**Mr. Brian Jean:** —because of course they went up by five or six over the total of a year.

You said, as well, in response to one of my colleague's questions, that the department was between a three and a four out of, in essence, five or six on the scale. How do we fast-track that? How can we fast-track that through the use of this committee, and in fact through the use of the department and in cooperation with the railways?

**Mr. Marc Grégoire:** Just to clarify Luc's answer, Luc is an expert, and he has been all his life in the railway safety environment, but this is a gut feeling. This is his own intuitive assessment. We have not yet determined a scientific tool to specifically measure it, which would require a survey of a large number of people, as we did, as I explained, with the implementation of our diversity strategy.

**Mr. Brian Jean:** I understand that. I guess I'm relying on the gut feeling at this stage. I think safety and security, in essence, are an ongoing process that we have to continuously work at. To ever get a 100% grade I think is, quite frankly, impossible.

How can we work towards doing so? Would you see more enforcement orders? Do you see more cooperation with the rails? How do you see that working?

**Mr. Luc Bourdon:** The report makes reference to cooperation. One of the things we're going to do is create a working group that will deal specifically with safety management systems, which will

involve the companies, the regulator, and the unions. So that will provide a forum for all of us to work together to get to better implementation of SMS. That has not really been done in the past in that kind of forum. So we could see some improvements.

**Mr. Brian Jean:** You're referring specifically to recommendation 55, and in fact to the entire chapter 12 on building relationships.

**Mr. Luc Bourdon:** Yes.

**Mr. Brian Jean:** This is more or less something that I seem to find over the time that we've studied this, which is over a year now. Certainly geographic regions such as mountains, the age of the rail, etc., come into the issue of safety dramatically, do they not? Or do they?

**Mr. Luc Bourdon:** As far as I'm concerned, we have rules and regulations in place, and those have been specifically created to address safety of train operations. Usually if you're in compliance and you have a good track, you have good equipment, people who are well trained, then regardless of the terrain you're operating on, you should be safe.

**Mr. Brian Jean:** Do the requirements under SMS change on the basis of geographic area the trains are operating in?

•(1240)

**Mr. Luc Bourdon:** It will change in the way that SMS requires formal risk assessment for all new operations, whereas before it wasn't the case. If they want to operate in a new area or operate a new line or a new commuter service, we will request a full risk assessment.

**Mr. Brian Jean:** In fact, is it possible that it will be a requirement for some of the rail companies that have not had the safety culture that's necessary in the past to have a more intense and robust SMS requirement in those areas?

**Mr. Luc Bourdon:** Absolutely, yes.

**Mr. Brian Jean:** Thank you very much.

**The Chair:** Thank you.

I'm going to open the floor up now for short questions if you want.

Mr. Bell, a couple of minutes.

**Mr. Don Bell:** I won't be long. I just want to get the answer to my question on recommendation 35, which was the one relating to the shared funding. We didn't have time on that one.

**Mr. Luc Bourdon:** For the grade crossing improvement program?



**Mr. Don Bell:** Yes, generally the support from municipalities, which was identified from some of the mayors who spoke to us and from our own committee when we took the phone calls in on the work that we were doing.... We had a telephone consultation from Richmond, from Langley. We had mayors from Quebec show up here and speak as well. The concern that was there for the lack of support in funding under the existing system.... They felt that for railway crossings, for the shared funding for those programs, which are mentioned in recommendation 35.... And I was curious whether more money was needed. I'm wondering what your thoughts are.

**Mr. Luc Bourdon:** There is no doubt that the report tested that, and our statistics show that the grade crossing improvement program has been highly successful. When we look at the decrease in terms of crossing accidents and we look at the crossings that were funded, this is where most of our improvements are coming from. The report also makes it clear that they do not recommend that we start to fund provincially regulated crossings.

As far as your question concerning the sharing of money among municipalities, railways, and Transport Canada, this is currently right now under the CTA, the Canadian Transportation Agency. If I understood your question, you were also referring at one point to perhaps our access control regulation, whereas when they're going to build new lines or new crossings, they have to get the municipality involved. We're currently working on a new regulation to address that, which in light of the report we may go a bit further on now than where we were planning.

**Mr. Don Bell:** I would just point out, Mr. Chairman, through you, as a former municipal mayor and council member, that the problems that have been identified by the Federation of Canadian Municipalities.... I forget, but it was a significant figure for the shortfall in infrastructure. I can refer to one situation in North Vancouver, where there was a rail crossing improvement needed. It was a substantial amount of money because it happened to be in a yard area in which there was private land beyond the yard that needed to be accessed. It meant there were regular crossings of up to five or six tracks. That gets to be expensive. So the need for safety needs to be a priority. It needs to be recognized that municipalities don't have the ability. They're already short-funded on their infrastructure needs.

**Mr. Luc Bourdon:** We currently invest about \$7.5 million a year. I think we have way over \$100 million invested in that program. We do prioritize all the crossings. There are lots of people who are interested in this program—plus the closing.

**Mr. Don Bell:** I know the frustration that was raised. I heard from railways and municipalities likewise in terms of the new tracks. In terms of when new track is laid and the issue of proximity of development—either in advance or where new development is going to occur—there needs to be a provision so that the municipalities become aware of the potential for conflict with the rail system, and the fact that the rail system is in many cases protected as a national priority.

**Mr. Luc Bourdon:** There is an initiative between the FCM and the Railway Association of Canada that deals with proximity and is an avenue that can be used at all times.

**Mr. Don Bell:** Okay. Thank you.

**The Chair:** Mr. Masse.

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

With regard to your advisory council that is being created here, would you be willing to add a spot for the environment? I ask because of the nature of some of the spills that have occurred. Second to that is some of the progression that can be made even in terms of emissions on the railway system. We see that as an opportunity to be more proactive as opposed to reactive.

• (1245)

**Mr. Marc Grégoire:** The committee has been focussing largely on improving safety, and the various representatives also all focused on safety. I think if we were to add the environment, we would incur the risk of diluting the safety aspect, and it wouldn't be the same membership. A lot of the people wouldn't necessarily be the same people, whether from Transport Canada or from the railways. But I understand the need for more consultation and more forums to discuss environmental matters. I am not sure this is the proper forum to do so, but we'll take this under advisement.

**Mr. Brian Masse:** I understand where you're trying to come from on that, but I think that also with the environment, given the types of hazardous materials and so forth that we have, there could be some worthwhile contributions made, during times when we are not in crisis, about how to deal with those things. Prevention, again, is part of it, and there could be a lot of modernization and reduction of emissions. This issue actually does relate to safety and prevention, with the newer technologies that are coming out for locomotives as well.

**Mr. Marc Grégoire:** You covered two different subjects here, but for the dangerous goods and for the dangerous matters, we already have the Transportation of Dangerous Goods Advisory Council, so we can use that. This is where we should bring those matters, but for emissions, as you know, this government has said it would regulate on emissions, so we do have to work on that. We haven't decided on the exact consultative forum. I agree with you there are some by-products, but this committee, we think, should really keep its focus on improving safety.

**Mr. Brian Masse:** Well, I hope you will at least consider that. I still think prevention would be there.

At any rate, what is the position of “public at large”? Could you clarify that? The other ones are self-explanatory.

**Mr. Marc Grégoire:** Somebody who is not linked to those.

**Mr. Brian Masse:** Is it going to be somebody who represents a consumers' group, or are you just literally going to...? How are you going to find that person? Are you just going to pull someone off the street?

**Mr. Marc Grégoire:** Maybe. I don't know.

**Mr. Brian Masse:** You don't know.

**Mr. Marc Grégoire:** No, we haven't discussed that. We just wanted somebody—

**Mr. Brian Masse:** Yes.

**Mr. Marc Grégoire:** —who is not part of all of those organizations.

**Mr. Brian Masse:** Well, maybe just for the sake of appearances, perhaps that person could be independently appointed or from a consumers' group or something of that nature.

**Mr. Marc Grégoire:** Okay.

**Mr. Brian Masse:** Thank you. Those were all the questions I had, Mr. Chair.

**The Chair:** All right. I thank our guests again today for being here, and I want you to know that the invitation is always open for you to return. Thank you.

With that, I have just a couple of things for the committee. Thursday we have CN and CP. Tuesday we have the union

representatives. Thursday, April 10, I have left open, and I want you to think about it and get back to me at the start or end of the next meeting. We'll just look at finishing up the review, and perhaps do it in camera if we want. Then we can have a more direct discussion.

So with that, I'll adjourn, and I'll just ask you to think about those things for the next meeting, to give me some advice and direction on them.

The meeting is adjourned.

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