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## **Standing Committee on Transport, Infrastructure and Communities**

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**EVIDENCE**

**Tuesday, December 11, 2007**

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**Chair**

**Mr. Mervin Tweed**

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## Standing Committee on Transport, Infrastructure and Communities

Tuesday, December 11, 2007

• (0910)

[English]

**The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):** Thank you, and good morning, everyone.

Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 7. The orders of the day are rail safety in Canada. As we all know, we've been reviewing the rail safety situation in Canada.

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

What I thought we would do is ask for an opening presentation; I know it won't be that long. Then members have several questions they'd like to ask. As we get closer to the end of the meeting, once our witnesses have presented and we've asked all our questions, we'll have a brief discussion on the draft. Then we'll end the meeting by finalizing Thursday morning's meeting.

With that, I'll welcome our guests. If you have a presentation, please feel free.

**Mr. Marc Grégoire (Assistant Deputy Minister, Safety and Security, Department of Transport):** I'm pleased to be here today to respond to any questions or concerns the committee may have regarding railway safety in Canada. I'm joined by Luc Bourdon, director general of rail safety.

You may recall that we provided the committee with a description of the general foundation for railway safety in Canada when we were last here in May of 2007. It was the end of May, I believe. I would, of course, be happy to go over any of the ground we previously covered.

My intention today, however, is to focus on what has taken place since my last appearance. That's why it's going to be short. I will also provide you with our proposed next steps.

[Translation]

As you no doubt know, in December 2006, the government announced the Railway Safety Act Review. The purpose of the review is to improve railway safety in Canada, and to further promote a safety culture within the railway industry, while preserving and strengthening the vital role this industry plays in the Canadian economy.

[English]

This review was undertaken by an independent four-member panel. The panel consulted a wide range of stakeholders. These included the public, railway companies and their industry associations, railway company employees and their unions, railway customers, provinces and territories, municipalities, aboriginal and environmental groups, and Transport Canada and other federal government departments and agencies.

Efforts were also made to ensure an extensive range of access for input, including a website to accommodate input from the public.

[Translation]

I expect the panel report will be available publicly early in 2008, probably in February 2008, to be more precise.

In the meantime, we continue our ongoing work with the railway companies to actively identify and rectify immediate threats to safety through our active inspection and auditing programs.

[English]

I should mention that we've had some successes in 2007, with main track derailments down 9.1%—that's for the period from January to October—and accidents, overall, down 4.3%. Again, that's for the same period.

These are, indeed, encouraging trends, but there's no time or place for complacency when it comes to the safety and security of Canadians and their transportation system.

I should mention, speaking of security, that the minister signed an MOU with the Railway Association of Canada on security in order for all railway company members to make security plans on a voluntary basis.

[Translation]

So while we anticipate that 2008 will see a continuation of these encouraging trends, it will certainly not happen without a commitment to safety from the industry.

[English]

As I have mentioned on other occasions, railway companies are responsible for making the appropriate decisions to ensure that operations are safe and that they are in compliance with all federal regulations, standards, and rules. I believe that with hard work and a commitment to safety, Transport Canada and the railway industry can help cement these positive safety trends.

We're ready for your questions now.

**The Chair:** Thank you.

We'll start with Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Thank you, and thank you, gentlemen, for appearing today and for coming back.

I have a series of questions. First of all, I did appear before the panel last year. I think it was last year; it may have been early this year. From your brief that you've given us this morning and from your comments, and I just confirmed with you, I see that you appeared as well. You say, "as well as Transport Canada and other federal government departments and agencies". This committee would like to have a copy of the material that you presented to them so that we could have that for our consideration.

This committee, of course, started the question on the investigation into rail safety in October 2006. The minister then appointed his panel in December. I would be hopeful that before the minister takes final action on the panel's recommendations, he would come before this committee so that we can complete our report and make any comments that we wish to make. But I have some specific questions that I would like to ask.

Some of the things we heard during the discussion with the witnesses was that there was a lack of teeth in the Railway Safety Act compared to the Aeronautics Act. On the issue of fines, of penalties, the railways said they didn't really think it was necessary to do that. We heard about the issue of conflicting standards—the American standards, the FRA standards—on determining what constitutes an accident, what constitutes...I guess not a derailment, but an accident by virtue of the value of the money involved, the cost of the incident.

I would like to know whether or not Transport Canada feels there is a reasonable opportunity for some type of, I'll use the term "international", but certainly American, U.S. standard, whereby we have some method of comparing statistics, because it appears in the testimony that the railways can use, when it suits them, either the FRA standard or the Canadian standard to create the most favourable picture.

In your comments earlier and just now, you talked about the number of incidents being down. I would appreciate getting the actuals, maybe in a graphic or a spreadsheet form. We know that 2005 was supposed to be a spike year, a really bad year. When the railways were here, they proudly said, and I think you in your testimony said, well, they're down, but they're down for the worst year they had for a long time. Being down from your worst time isn't necessarily anything to be proud about.

It's good to say yes, we've moved in the right direction, but if you say they're down 4%, or whatever the figure you just gave us—down 9% on accidents and 4% on derailments, or perhaps I reversed those from down 9% on derailments and 4% on accidents—that is down from what? In this case, it's 2007 to 2006. How much was 2006 down from 2005? We heard figures previously on five-year averages, but a five-year average would include 2005, which was an abnormally high year. If you start taking averages and you include one figure that is higher than the others, that will distort those figures.

I'd like to know what your comments or recommendations would be relative to trying to draw some parallels in the Railway Safety Act to the Aeronautics Act and putting teeth into it in the form of fines, penalties, making corporate responsibility...whether it's individuals, the chief executive officer, or the president.

In the Aeronautics Act, my understanding is that there is responsibility that assigns to certain individuals within those companies. We don't have that in the Railway Safety Act. What would your thoughts be about having that there?

Could we get in future some actual statistics for us to see? I know that going back 10 years ago, approximately 1995, 1997, somewhere in there, when the railway safety management systems were put in, the statistics dropped. But they dropped, as I understand, because there was a difference in the way they were reported, not necessarily a real drop in terms of safety, as a result of SMS systems going in.

• (0915)

The other question I'd like to know is, in terms of the number of inspectors, do we have 35 railways...?

Am I out of time already?

You're just hassling me.

**Voices:** Oh, oh!

**Mr. Don Bell:** This is something I feel very passionate about, as you can tell.

I gather we have about 30 to 35 major railroads in Canada. We have about 25 to 30 provincial railroads. I'm thinking of BCR, as an example.

How many inspectors do we have? I'm not talking about people who are in Ottawa. I'm talking about people out in the field who are there, able to go out and investigate these incidents, which seem to be occurring with increasing frequency. There was another derailment just the other day. We've had some really serious ones in British Columbia, and we obviously had some in Lake Wabamun, Alberta. In some cases there's been death involved, in some cases environmental disaster, and in other cases there has been risk to neighbouring communities. In every instance there is the delay in the movement of the freight goods that are important to the economy of Canada.

Increasingly, rail is a method of transporting hazardous goods. It is considered to be one of the safest ways of transporting hazardous goods. But if we have a risk of derailment and accident—I realize that's likely not as risky as maybe trucking or other methods of transporting hazardous goods—we need to be able to assure Canadians that it's as safe as possible. In my community we've got a chlorine plant, and railways go through that everyday.

I would appreciate your comments.

• (0920)

**The Chair:** You've got eight seconds.

**Voices:** Oh, oh!

**The Chair:** No, take what you need.

**Mr. Marc Grégoire:** I will answer your questions in the same order that I took notes.

The first copy of the presentation will come back to you.

Was it translated?

**Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport):** I'll have to check if it was translated.

**Mr. Marc Grégoire:** We'll make sure that if and when we give it to you it is translated.

You would like the recommendations of the panel looked at by SCOTIC before the minister makes a decision on it. I'll relay that to Minister Cannon. As you know, the panel will make recommendations. That's an external, independent panel, so we have to look at those ourselves and make a recommendation to the minister. I'll tell him that you want to make your own on that.

With respect to the lack of teeth on fines and penalties, it is true that the Railway Safety Act doesn't have a monetary penalties scheme. For that purpose it is quite different from the Aeronautics Act, which you mentioned, and even more so the amended Aeronautics Act, which is now awaiting third reading in the House.

We would like the ability to impose fines, because prosecutions are rare compared to fines. For instance, monetary penalties were introduced in the Aeronautics Act in 1985, and we publish all the penalties that are imposed on aviation stakeholders. It's not ideal. We would like to think that companies should comply first. But it has been a very effective tool, especially with fines that can increase in such a manner that they pay attention.

I don't know what the panel will recommend, but this is certainly something the department will want to look at seriously, given that we've put significant increases in the Aeronautics Act amendments and that we've also allowed for monetary penalties in the Canada Shipping Act, 2001. We're also going that way in the marine environment. We recently enacted regulations under the Marine Transportation Security Act. This is something that we believe is an effective tool and that we would certainly like to consider here.

With respect to what constitutes an accident and why it is different from the States with the FRA, it's not our legislation that calls for the report of accidents; it's the Transportation Safety Board. It's the railway company that has to comply with the transportation safety board act, which forces them to report accidents.

International methods to compare safety are quite interesting. I've had the same questions you have had as to why is it so difficult to compare. Certainly we will try to find ways...but, again, the collection of the data is done by the Transportation Safety Board. They would be the first architect of a change in that regard.

You want safety data that goes further back than 2005. It is true that the numbers we gave you start from the worst year, but we have graphs and stats that go way beyond that. We can provide that to the committee. Whenever we make a presentation, we use a graph—for instance, when we compare safety data between all the modes for the last 10 years. I believe I may have given that to the committee before, but we'll dig out that railway safety data. You will see it has come down, and then gone up in 2005, and then down again since. But we will provide you with the exact figures.

With respect to “accountable executive”, I have no views; I serve my minister. My minister has views, so I will relay your questions to my minister. But it is true that there is a difference between the Railway Safety Act and the Aeronautics Act.

• (0925)

The Aeronautics Act introduces the concept of “accountable executive”, which is, generally speaking, the person who can make the decision on budgets in a company. Generally speaking, we have found that it is the CEO.

On the drop in statistics, we covered all that.

You asked about how many inspectors we have. We now have 101 inspectors, in total, including those in Ottawa. In the regions, specifically in our various Transport Canada centres, which are spread from Vancouver to Moncton, we have 86 inspectors at this time.

I believe I have covered most of your questions.

[Translation]

**The Chair:** Mr. Laframboise, you have the floor.

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

I would like to talk about how many inspectors you have. It's no secret that the safety management system in the railway industry has not yielded the expected results.

Our in-depth analysis of the airline industry has made us aware that we must continue with monitoring and inspection activities to ensure that the railway companies do their job. It's the only way to achieve this.

You said that there are currently 86 inspectors in the field. Is this because that number has increased recently or because you intend to hire more of them?

**Mr. Marc Grégoire:** The number has remained unchanged over the last two years. In fact, I have a chart here which goes back to 2002. There were originally 95 inspectors for all of Canada and that number has now gone up to 101 today. The number hasn't changed since 2003. It is stable, there has been no change.

**Mr. Mario Laframboise:** Well don't you think that is precisely the problem?

**Mr. Marc Grégoire:** In fact, there was an increase in 2002, if I recall correctly. So we added...

**Mr. Luc Bourdon:** We added two inspectors per region.

**Mr. Marc Grégoire:** We added two inspectors per region. So there was an increase in 2001 or 2002, or even perhaps in 2000. But there has been no change since then.

**Mr. Mario Laframboise:** You talked about the safety management system. Is this to control the system or to monitor the condition of the tracks? How does it work? Have you changed the way you operate? That's what I'd like to know.

**Mr. Luc Bourdon:** No, the number of inspections has not gone down since then. We still operate with both systems in parallel, because the level of compliance of the safety management system is not where we would like it to be. Consequently, we are still not confident that we can reduce the number of inspections. We continue to inspect the locomotives, cars, tracks and bridges, like before. The number of inspections has not, or hardly, gone down.

**Mr. Mario Laframboise:** How does that affect the inspection of the tracks? How many kilometres do you inspect each year? Do you have any figures? You have a report.

**Mr. Luc Bourdon:** Yes, we have a report. That number has increased because in British Columbia, we have bought a car which allows us to take readings of the tracks, to read the track geometry, and this is something we could not do before. This car is similar to the ones owned by the railway companies. We bought a first car, which allowed us to increase our track inspection capacity and to take much more specific readings. We plan on adding more of these cars in every other region. We can cover much more territory now and take much more specific readings. We can now look at these readings and compare them with those provided by the railway companies to see whether they correlate.

**Mr. Mario Laframboise:** How many cars do you have?

**Mr. Luc Bourdon:** We only have one, which we bought last year.

**Mr. Mario Laframboise:** It is in British Columbia.

**Mr. Luc Bourdon:** For now, it is in British Columbia because we felt that the problem was more pressing there.

**Mr. Mario Laframboise:** What results have you obtained when you compared readings?

**Mr. Luc Bourdon:** When you compare the two readings, there certainly is a correlation. However, there are defects which must be repaired.

**Mr. Mario Laframboise:** So, as you say, you would need more than one of these cars.

**Mr. Luc Bourdon:** Indeed, we wanted to try the car out in that region, and the results were conclusive. I don't believe we will buy five of these cars, because some regions are smaller and could share such a car with another region, since the inspection itself is much faster. But we certainly intend to buy at least two other cars.

• (0930)

**Mr. Mario Laframboise:** Are you saying that inspections really happen twice as quickly...

**Mr. Luc Bourdon:** In the past, most inspections were conducted on foot. Inspectors chose a section of track, walked along it, inspected it and took measurements. But now, we have a car to do all that.

**Mr. Mario Laframboise:** You could say we are going from the stone age to...

**Mr. Luc Bourdon:** We are beginning to catch up with the current technology, which has greatly increased our capacity to...

**Mr. Mario Laframboise:** You lose your trust in the safety management systems, the SMSs, when you look at the number of accidents which have occurred. I repeat, in the case of air transportation, ICAO has said that inspections must continue

because of a lack of trust in the system. In fact, you have said so yourself.

**Mr. Luc Bourdon:** Indeed. When we implemented the SMS, we never intended to stop inspections. What we ultimately want is to obtain a compliance profile for each railway company. We want to know their compliance profile and how their safety management systems work. If a railway company has a good profile, if it does not have many accidents, if our inspections turn up nothing and if the safety management system is in compliance, we will conduct fewer inspections. We would then concentrate on railway companies which have more problems. And in the case of those, we would really have to go back to basics, which is to conduct inspections.

**Mr. Mario Laframboise:** You said that the number of inspectors has not changed since 2001. Would you need more of them?

**Mr. Luc Bourdon:** I have not seen the report yet, but I presume that the report on the review of the act will contain various recommendations for us. Perhaps one of them will be to hire additional staff.

But since I have not seen the report yet, I cannot say whether that will be one of them.

**Mr. Mario Laframboise:** Under the safety management system, do you also analyze each railway company's budget for repairs? Do you cover that as well?

**Mr. Luc Bourdon:** That is currently not an obligation under the safety management system.

However, we will meet with CP in the third week of January. The company will present its plan for 2008. Every year, we see the amount of capital investment the company makes. We also see the figures for whole divisions, which are virtually broken down by subdivision, so we can see how many tracks and ties will be changed and where new welded tracks will be laid. CN also shows us its figures.

Eventually, under the framework of the safety management system, we could ask the railway companies to provide us this information at the beginning of each year. Today, we get the information from the large railway companies. So we have it at the beginning of each year. For example, last year, CN invested \$1.5 billion in its infrastructure.

**Mr. Mario Laframboise:** Fine.

Is there any way for you to make recommendations regarding the things you need? Does the system work well enough for that to happen?

**Mr. Luc Bourdon:** The only powers we have are contained in section 31 of the Act. If, for instance, we found a 60 m/h section of track which was not up to standard, we would issue a slow order for 35 or 40 m/h for that section.

**Mr. Mario Laframboise:** It's the only power you have.

**Mr. Luc Bourdon:** It's the only power we have. If the railroad company decided not to make the investment and to travel at 40 m/h, then the track would be in compliance. We would have no problem with that, but trains would not be allowed to travel at 60 m/h.

[English]

**The Chair:** Mr. Masse.

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

One of the changes the United States imposed on Canada in 2003 was to have railway cars gamma x-rayed through the VACIS machines. There was one added in Windsor as well as those in other areas.

What percentage of railcars are actually screened prior to entering into the United States?

**Mr. Marc Grégoire:** It is 100%.

**Mr. Brian Masse:** It is 100%.

I'm interested in the mechanics of this. Since that time, how many seizures have there been of either contraband or maybe other types of threats, bombs, or anything else, guns, cars, or other types of illegal merchandise?

**Mr. Marc Grégoire:** I'm not aware of any transportation security-related issues. There may be customs issues, but I'm not aware of those.

**Mr. Brian Masse:** So we don't really have an annual report on all the x-rayed materials. Does nobody from your department track that?

**Mr. Marc Grégoire:** Nobody does in Transport.

**Mr. Brian Masse:** Who would? Say, for example, a VACIS—

**Mr. Marc Grégoire:** In that case, it's U.S. Customs. It's under the Department of Homeland Security. Even though these installations are located in Canada, they're actually operated by U.S. Customs.

• (0935)

**Mr. Brian Masse:** Really? So say we did find illegal merchandise or a bomb on a railcar and it was actually x-rayed several kilometres before the Windsor-Detroit corridor. Would we just allow that to continue to go through the neighbourhoods and over into the United States before any type of action would take place?

**Mr. Marc Grégoire:** No. If there were a bomb, U.S. Customs would inform us immediately. It would go, most probably, through the Canadian customs, through CBSA, but the RCMP would be involved immediately. If there were a bomb on a train, obviously, the train would be stopped there and the bomb would be deactivated.

**Mr. Brian Masse:** Right.

Approximately how many railcars do we have going over to the United States?

**Mr. Luc Bourdon:** Canadian fleets have about 97,000 cars, and globally in North America there are 1.2 million cars. On any given day, they're being called to go up and down constantly. It would be very hard to establish a....

Right off the top of my head, I don't know what the number would be, but we could get that to you.

**Mr. Brian Masse:** Yes, I would like to have that. We were dealing with, in another committee, stolen vehicles and other types of merchandise going through our ports. One indication was that perhaps the rail system was one of the vehicles used as well for stolen merchandise, so I'm just curious about the operations.

Now, you were saying something that I didn't realize: there are U. S. Customs officials in Canada operating the VACIS system. Is that what you're confirming?

**Mr. Marc Grégoire:** It's an arrangement between U.S. and Canadian customs. I'm not familiar at all with the operations, so you really have to speak to either U.S. Customs or CBSA.

**Mr. Brian Masse:** The reason I'm probing on this is that there have been a lot of discussions in, for example, the United States on the movement of chlorine and other types of dangerous, hazardous materials. Windsor has a corridor along there that's used as well. I'm just wondering whether....

I'm just kind of surprised that your agency doesn't really have that type of information after the screening is done. There are still several kilometres of track and then a tunnel to get over to the United States side. If there were safety issues and so forth....

I thought there would be maybe some type of overall information.

**Mr. Marc Grégoire:** I've been there since these VACIS machines started to operate, and I have not been made aware of any transportation security issues—none, zero.

**Mr. Brian Masse:** Okay, that's good.

Second to that, in our area—and I'm curious about other parts of the country—I know we had a long, difficult struggle to get access to some of the rail yards to do emergency first responder training, especially the municipal fire and rescue operations. There were some agreements that were made to do some training exercises and so forth.

What's been the relationship across the country with the access of municipal and other first responders with regard to doing preplanned operations? It's private property, so permission is required and so forth.

**Mr. Luc Bourdon:** So far it's been very good. We did one in Cobourg about a month and a half ago.

Usually we get very good cooperation. The cities are glad to cooperate. The feedback we're getting from firemen and first responders is that they're learning a lot from those exercises.

So it's going well so far.

**Mr. Brian Masse:** Is there a special fund or assistance provided to municipalities to do some type of training? I mean, obviously this comes out of the time they use, their equipment and services and so forth—

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

**Mr. Brian Masse:** And your department will provide some resources?

**Mr. Luc Bourdon:** When we had Direction 2006, we did participate in some of those mock accidents or derailments. The railway would provide equipment and the track and the city would provide the time for firemen first responders. Usually there was cost-sharing in place.

**Mr. Brian Masse:** Is that going to carry on? Is there still going to be assistance for municipalities to do first responder training in subsequent years?

I just worry a little bit that with a lot of the budget constraints they're facing, for them to take personnel and overtime and training and so forth, if it comes from basically property tax providers, it's probably not the best source of supports.

**Mr. Luc Bourdon:** I can't talk about funding. The only thing I can say is that we do have a new outreach program—Direction 2006 was from 1996 to 2006—and part of that outreach program uses a risk-based approach, finding the areas throughout the community where they may be helped with respect to rail safety. Then we try to determine the best tool to use to achieve what we're trying to achieve there.

**Mr. Brian Masse:** Could you perhaps get back to us in terms of finding out whether or not your department still has money and funds available for, once again, these types of training projects?

● (0940)

**Mr. Marc Grégoire:** But as far as I know, we don't have any such program today.

**Mr. Brian Masse:** I'd just like a reconfirmation of that.

**Mr. Marc Grégoire:** I can pretty much confirm that we don't have any.

**Mr. Brian Masse:** Okay. That's too bad, because that's what I worry about, the work that has been done and also the constraints that are being faced right now. Obviously these are very much important issues, especially with chemicals and hazardous materials.

Those are all my questions right now.

Thank you, Mr. Chair.

**The Chair:** Mr. Jean.

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

Thanks for coming today.

I think it's fair to say that nobody is interested in having accidents in our rail systems. But in reading this draft report, to me it seems to indicate that, for the most part, better accountability from both Transport Canada and the railways themselves would be the first step in making sure that accidents are minimized or come as close as possible to elimination. In fact, it talks about better regulations, more enforcement orders, and more inspections of track—or that's what I seem to get out of the report itself.

As my first question—I have quite a few—has there been a change since January of 2006? I know you haven't had a chance to look at the report, but has there been a change? What enforcement orders and what steps have been taken against railroads by the government in terms of regulations or enforcement orders?

**Mr. Luc Bourdon:** I can answer that now.

In 2006 we issued a total of 50 notices and 26 notices in order, for a total of 76. So far this year we have issued 37 notices and 21 notices in order.

**Mr. Brian Jean:** Is that a normal situation for the government to issue those kinds of orders?

**Mr. Luc Bourdon:** It is, yes. Probably 2006 was a higher number than we usually give on a yearly basis.

**Mr. Brian Jean:** Do you have the information from the previous years, such as 2003?

**Mr. Luc Bourdon:** We could get you that. That's no problem.

**Mr. Brian Jean:** I would like that, even back to 2000, please.

**Mr. Luc Bourdon:** Also, in 2006 three prosecutions were initiated: two against CN and one against one of CN's employees, who was found guilty two weeks ago. In 2007 there was a prosecution initiated against CP.

**Mr. Brian Jean:** If you have that for 10 years and could provide that, it would be very helpful.

I had an opportunity to speak to somebody who was on the track last night for a period of time. He seemed to indicate to me that accidents or incidents are primarily divided into three categories: crossings, problems with track, and suicides.

Now, as far as suicides go, I don't think we can do much about that, except for information, but crossings and track....

I'd like to talk about track a little bit, because he seemed to indicate that most of the problems are from that. There are two types of cars, I understand, that inspect tracks. There is an x-ray car or a ferry car, and there is a tech car. Now, although we have tech cars, I understand that x-ray cars.... Is the technology patented and owned by an independent company that rents these x-ray cars, or how does that work?

**Mr. Luc Bourdon:** The x-ray cars are the ones that some of the railways are contracting from Sperry, which are actually able to detect some defects within the rail, whereas the other one is what we call a track geometry car, which mostly measures the geometry of the track, and the railway owns these cars. There are companies that also provide leases on those cars, but CN and CP own a few of these cars.

**Mr. Brian Jean:** Is there a correlation between the accidents that happen and the inspections themselves, or the lack of inspections?

**Mr. Luc Bourdon:** Usually, when there is an increase in terms of track-related accidents, we find through our inspections that there's a correlation.

**Mr. Brian Jean:** Indeed, are there regulations for the railroad right now as far as how many tech cars they have?

**Mr. Luc Bourdon:** No, there is no regulation. Actually, there is no regulation that forces the railway to purchase that type of equipment. However, what we provide within the track safety rules is that if you do use that type of equipment, you can reduce the number of visual inspections, because these vehicles do a better job. But if you don't have those vehicles, you have to increase your number of visual inspections.

**Mr. Brian Jean:** Now, would you suggest that the x-ray car or the tech car are both necessary, or indeed, could it be possible to use the tech car to pick up most of these problems with tracks?

**Mr. Luc Bourdon:** They definitely provide better readings than you can get visually.

**Mr. Brian Jean:** Do you know how many of these cars are currently in service by CN or CP?

● (0945)

**Mr. Luc Bourdon:** I know that CP has two. I think CN has two as well, but we could get you that number if you want.

**Mr. Brian Jean:** I would appreciate that. And I would like to know of any that are owned by any other short line.

Now, the speed boxes are also on many of the engines now. Is that correct?

**Mr. Luc Bourdon:** Yes.

**Mr. Brian Jean:** Is that a mandatory requirement?

**Mr. Luc Bourdon:** It was a recommendation from the TSB, and right now it is included in our locomotive safety rules.

**Mr. Brian Jean:** So all locomotives in Canada now have to have speed boxes.

**Mr. Luc Bourdon:** On main lines, yes they do.

**Mr. Brian Jean:** Are there any requirements for speeds in certain areas?

**Mr. Luc Bourdon:** It measures speed; it measures everything except voice.

**Mr. Brian Jean:** You misunderstand the question. Are there specific speed limitations? When I go down highway 63, I'm allowed to go 100 kilometres an hour. When you go around a bend in a railroad, is there a requirement to go within a certain speed limit?

**Mr. Luc Bourdon:** Oh, yes, absolutely. Plus, everyday when they leave with their train, they have their orders that will tell them if the track speed has been changed between one mileage point and another mileage point, so they know that usually it might be 60 miles an hour and now they have to go 30. They know all that.

**Mr. Brian Jean:** In fact, is it fair to say that in the past, speeding was one of the key indicators or key problems in many accidents?

**Mr. Luc Bourdon:** No, I think the train crews respect speed. You can be fired if you.... If you come back with a train, one of the first things they can do is download the data from the event recorder to compare it with the allowable speed on the track and see if they were speeding. Usually train crews do respect speeding. It's never been an issue, as far as I'm concerned.

**Mr. Brian Jean:** The weather has a dramatic impact on safety on the rails as well. I understand that pull-aparts, broken rails, and sun kinks are all part of the dynamics of rail.

With increased inspections of these types of cars, these ferry cars, would you see there being the ability to do more preventive maintenance, more repairs on tracks, or is that already, do you think, to the point where we would see no real change in the number of accidents if we increase it?

**Mr. Luc Bourdon:** I think the standards we're working with right now are pretty good. I think we see fewer and fewer sun kinks. We have welded rail now, and it's being de-stressed, so we see less of that. Broken rail is still a problem when it's very cold, minus 35, minus 40. A lot of the railways do have special instructions now. When the weather is below a certain degree, they will reduce track speed.

So I think from an inspection standpoint, it's pretty accurate right now.

**Mr. Brian Jean:** Do the x-ray cars pick up problems with rail before they have those problems of the broken rail during extreme cold?

**Mr. Luc Bourdon:** Yes, they may be able to detect cracks and vertical split heads; however, there are things that are very hard to detect. We do get some TSB reports saying that the root cause of the accident was a broken rail but it was almost impossible to detect with the current technology. That may happen.

**Mr. Brian Jean:** I understand that tests are done on the basis of tonnage over a track, or usually are. Do you know the internal systems of the railroads, as far as when they will do these inspections? My understanding is some tracks get a three-month inspection or a four-month inspection. Do you have any information internally?

**Mr. Luc Bourdon:** I'd have to look at each of the railways, at exactly what frequency they're using.

**Mr. Brian Jean:** Would you be able to provide that to the committee as well?

**Mr. Luc Bourdon:** Yes.

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

**The Chair:** Mr. Maloney.

**Mr. John Maloney (Welland, Lib.):** Are prosecutions instituted as a result of your inspections showing defective situations, or only if there's a derailment, or only if there was a derailment causing loss of life or environmental damage?

**Mr. Marc Grégoire:** As I mentioned in May, the number of successful prosecutions we do is very small, but they could be a result of any of the things you mentioned. We'd have to look at those. But, generally speaking, *le procureur général du Canada* will prosecute a company, on the recommendation of the department, when it has broken the law or when it has not followed the regulations. It's not because of an accident or because of a derailment; it would be because the law was not abided by.

**Mr. John Maloney:** Is there a range of fines? Is there a maximum?

**Mr. Luc Bourdon:** Not pre-established.

**Mr. Marc Grégoire:** It's not pre-established in the act, no.

**Mr. Luc Bourdon:** If you look at section 41 of the Railway Safety Act, what it says is, basically, whoever violates the Railway Safety Act can be subject to prosecution. So everything Marc has mentioned would be covered and everything you mentioned could be covered.

● (0950)

**Mr. John Maloney:** I appreciate that you've indicated that the number of incidents are down significantly, but in the last three or four years there seemed to be a real chronic problem. I won't say the railways are ignoring this, but the frequency and the severity of the incidents would suggest that someone needs a wake-up call. I'm wondering whether a significant indication of a fine range might be that wake-up call, or perhaps even in extreme situations criminal charges could be laid. Has that ever happened in the situation of a rail accident?

**Mr. Marc Grégoire:** Criminal charges, no, not to my knowledge, but we got the wake-up call when the accident rates increased back in 2005. Right after that, we went into the company where we saw the significant increase and we did a massive number of inspections. We also did a safety management system audit, and the company was ordered to rectify its behaviour under the safety management system.

Following that, we did see significant improvements throughout the network, and we also saw the company hire a special VP on safety and put more emphasis on safety, generally speaking.

So in terms of the type of action you mention around prosecution, if after having been told and after having been subjected to all of that, the company had continued to violate the law, then we would have prosecuted.

**Mr. John Maloney:** Can railway crews refuse to take a run if they feel that for some reason there is a serious problem with the track? Is there job protection for them if they do that?

**Mr. Luc Bourdon:** Yes. That's under the Canada Labour Code, section 128, which is called the right to refuse. Every worker has the right to refuse if they believe they're subject to unsafe conditions, regardless of whether it's a train crew or a shop employee. Even someone in this room could do it.

**Mr. John Maloney:** Do we have anything in the act, or a related act, to cover a whistle-blower, legislation where an individual would be protected if they came forward?

**Mr. Luc Bourdon:** It's done under TSB right now.

**Mr. John Maloney:** What's TSB?

**Mr. Luc Bourdon:** That's the Transportation Safety Board, where people can call and report incidents anonymously. Usually when that happens, TSB will contact us and say they got a call. They won't tell us who called, and they will actually give us the circumstances of what happened. Usually we'll send someone out there to....

**Mr. Marc Grégoire:** But the whole philosophy of a safety management system is to encourage everybody in the company, all employees, to report problems. The company must have established a system where it's a non-reprisal environment, so people are encouraged to report issues without the fear of any kind of reprisal. This is very important in the implementation of a safety management system, because what you want to see is an increase in reports of defective equipment or of safety issues. You want to see those numbers increase so that they can be fixed by management.

If the company takes reprisal action—fires people or gets rid of people as soon as they report something—you won't see any reports coming after that.

**Mr. John Maloney:** You indicated that in 2006 you issued 50 notices, and in 2007, 37 notices. When you issue a notice, what happens?

**Mr. Luc Bourdon:** With regard to notices, usually we will ask the railway to give us an answer or fix a certain situation within a certain timeframe. It's not an immediate threat, whereas with a notice and order, we will usually impose some operating restriction. For instance, if it's a defective track, we will ask them to reduce the speed right away. If the equipment—locomotives and cars—is not in good order, they will not be allowed to use that equipment until it has been repaired.

The notice, for instance, is probably where an inspection wasn't done within a certain timeframe; however, we inspected the track and we know it's safe, but we will ask them to provide their own report within a certain timeframe.

So one gives you a period of time to fix it; the other one you have to fix right away.

**The Chair:** Monsieur Carrier.

[*Translation*]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Thank you, Mr. Chairman. Good morning, gentlemen.

I noted that you made your presentation with a certain degree of assurance and optimism. But your attitude does not reflect the urgency and especially the importance of the situation. You said that an advisory committee, which will produce a report in February of 2008, has been struck. You also said that you appeared before the committee in the past. I did not receive any information on the type of presentation you would have made to the committee. I don't know if that is public information or not. Before you respond, I just want to say that I get the impression that you are actually waiting for a decision. Another committee is studying the situation. As for us, we are studying it to the best of our ability.

A little earlier, in answer to a question from my colleague, you said that the number of inspectors had remained unchanged. The only improvement I noted was that you now have an inspection car in British Columbia. However, you know that Canada is a very big country. Quebec alone is bigger than France.

I get the impression that you don't feel it is urgent to improve the situation. You quote nice statistics which indicate that the number of accidents has gone down. It is easy to point to statistics, but the situation could change dramatically if, for instance, a major derailment happened next week. That would certainly turn these statistics upside down and we would react strongly.

I don't see anything reassuring in this situation we are discussing this morning. In light of the information you have provided, I can only cross my fingers and wait for the recommendation of this committee and of the other government advisory committee. It's as if you felt you are on easy street. I would like you to respond.

● (0955)

**Mr. Marc Grégoire:** I certainly did not want to give the impression that we are missing the boat, if I can put it that way. In fact, that is not at all the case. We have about a hundred inspectors and they work everywhere in each region. They conduct inspections, they issue notices and orders to the railway companies. I don't quite understand how you expect us to react here this morning.

Given the fact that the number of accidents increased in 2005, the department decided last year to undertake a complete review of the Act. We cannot make any recommendations before seeing the panel's report, but that won't be long. We will get it in a few months. I really don't understand what attitude you expect us to take.

Statistics show that since 2005, following the measures we implemented, and the spot inspections and quick operations we conducted, the number of accidents decreased. It shows that the railway companies took concrete measures and that they took this matter very seriously. We have not reduced the number of inspections nor the level of investment, and we do not intend to do so.

Do you have any special recommendations?

**Mr. Luc Bourdon:** As far as the new car we purchased is concerned, that was a pilot project. We had never used a car like that one before. As you know, you cannot get to a railway crossing, get on board and go. You first need to obtain authorization from the railway companies to use the car on their tracks. So a lot of legal and operational preparators work has to be done, and once that is completed, we will be able to use the car.

We are conducting a follow-up with regard to section 32, which was submitted to Canadian National. By the end of the week, industry officials will receive a departmental order to completely overhaul the training of railway crews. We asked the industry to review its rail operation rules. That was done, and it yielded a very thick document. We are reviewing it for approval. We are reviewing the rules governing air breaks, and those rules will probably be tightened. We are also undertaking a complete inspection of all of CN's tracks and CP's signals. We are doing all of these things on top of our regular work.

We have really started to review our rules one by one to determine whether they are adequate, and we are asking the railway industry to do the same. So we are working on regulations. This work might not be visible on the ground, but it will provide Transport Canada with better compliance tools.

•(1000)

**Mr. Robert Carrier:** You talked about the safety management system which the companies must implement. However, the railway workers who appeared before the committee told us that they were never told of such a system by their employer. This showed us that the system never reached the workers, that perhaps it was just a theoretical notion confined to the inside of an office. And this concerns me because the system itself is good, but it must be monitored and enforced by the department.

**Mr. Luc Bourdon:** CN's 2005 audit report revealed that employees were not consulted very often, and this was especially true for this company.

**Mr. Robert Carrier:** In Quebec, the last accident which happened was in Montmagny. It was a major derailment in the middle of the town, which was built around the railway tracks. The trains travelled at lower speeds while the track was being repaired. The town's mayor, who appeared before this committee, asked that the speed limit be permanently reduced to make the townspeople feel safer.

I mention this because it wasn't just another derailment. In fact, this time the accident touched people directly. I know that some of them do not want to live near the tracks anymore because they panick anytime a train goes by.

Can you tell me if Transport Canada agreed to reduce the speed limit to make the citizens of Montmagny feel safer?

**Mr. Marc Grégoire:** As far as I know, the department has not imposed any permanent speed reductions in any village, town, or city. At issue in that particular situation are the track geometry and the safety of neighbouring areas.

**Mr. Robert Carrier:** Do you know whether CN agreed to reduce the speed at the request of the town?

**Mr. Luc Bourdon:** We conducted the appropriate on-site inspection. The last I heard about this issue is that the townspeople were told to speak with CN. As long as track safety rules are respected, we cannot take action under our regulatory framework by ordering, for example, that the speed limit be reduced from 60 m/h to 30 m/h. I would have to check on the status of negotiations with the Quebec Region people.

**Mr. Robert Carrier:** Can you send me the information?

**Mr. Luc Bourdon:** Yes.

[English]

**The Chair:** Mr. Fast.

**Mr. Ed Fast (Abbotsford, CPC):** Thank you.

First of all, I would like you to clarify one thing. Mr. Jean had talked to you about the track condition and the number of incidents that were related to poor track condition. Do you have an exact percentage of how many derailments are a result of poor track condition?

**Mr. Luc Bourdon:** The Transportation Safety Board would have that information. We don't keep that at Transport Canada. And they would probably only have it for the accident they have investigated, which is not all of them.

**Mr. Ed Fast:** This is a rail safety review, so I'm a little surprised we don't have that kind of information.

**Mr. Luc Bourdon:** We can request it from the railway. From time to time we do ask the railway to provide that information to us.

**Mr. Ed Fast:** If 90% of all derailments are as a result of track condition, then we know where we're going to have to focus our efforts.

**Mr. Luc Bourdon:** Historically, the number one cause of train derailment has usually been the human factor, followed by track and equipment.

**Mr. Ed Fast:** I think we need to know that.

I would like to follow up on what Monsieur Laframboise and Mr. Carrier raised, which is the whole issue of safety management systems. I, too, am disappointed by the lack of rigour with which safety management systems have been implemented within the railway system.

We've had a lot of evidence on, I believe, Bill C-6, when it dealt with aviation safety. I think there was a general consensus, in fact an overwhelming consensus, that safety management systems, first of all, were good, that they were very helpful in improving safety within aviation, and secondly, they were actually working; they were achieving the results they were intended to achieve.

For example, the evidence before this committee was that the number of reported incidents went up by 400% to 500%. That's good news; it's not bad news, because we have more front-line workers reporting problems right where they're starting, rather than waiting until we have a huge incident like a derailment.

I didn't hear that from the testimony we heard on rail safety. I want to know why that is. I'm a little concerned about the fact that the only whistle-blower protection right now is under the auspices of the TSB. With the aviation safety management system, it was very clear there was immunity for the front-line workers when they reported matters that could lead to safety issues. I'm not hearing that in this review.

Perhaps you could respond.

•(1005)

**Mr. Marc Grégoire:** First of all, this kind of protection is not in the present Aeronautics Act but rather in the amendment to the Aeronautics Act. Hopefully, if this act is promulgated, we will have this protection in aeronautics.

But it's fundamental to the philosophy of safety management systems. As you said, we want to see a significant increase in the number of problems reported by employees. Generally speaking, where this has been implemented successfully it has resulted in better morale within the employee workforce. It has also resulted in monetary savings at the end of the line. If problems are reported before incidents or accidents occur, then there can be significant savings. Many airlines have demonstrated that.

There is no whistle-blower protection in the Aeronautics Act as proposed. There is protection, but it's not what we call whistle-blower protection per se.

Why don't we see that in rail? We don't have the same legislative framework. Definitely this is what we would like to see. When and if the legislation is open for debate, this is certainly something we will look into, but it's not there now.

You mentioned you were disappointed that some employees have told you they don't feel protected. That's true. In the first intervention with Mr. Zed we talked about accountable executives in the aeronautics environment. What we have put forth is the commitment and the accountability of what we call the accountable executive.

We don't have that in rail right now. But when you talk about safety management systems, you're talking about a massive culture change in an organization that can take many years. We can see that now. In rail we started to implement SMS in October 2001, if I remember correctly. It has been six years and it is still not implemented as we would like to see.

**Mr. Ed Fast:** I think you're saying you need the legislative structure to make SMS work. Is that correct?

**Mr. Marc Grégoire:** We need it to make it stronger and give it more teeth. We've already talked about some of the things that would be useful.

**Mr. Ed Fast:** I've spoken to CN workers in my community, and they speak of very poor morale within the culture of CN. You're probably correct in saying that a big part of the problem here is that within certain of our railways we don't have the culture that enables SMS to work properly.

The evidence from our aviation safety review was very clear. The main airlines in Canada started implementing safety management systems well ahead of time, before the legislative structure was even in place, and it was actually working. But that's not the case with rail.

I think that's going to be part of the final report we have coming out of this review. Some legislative changes will probably be needed to make sure that SMS actually does the job for which it was intended.

•(1010)

**Mr. Marc Grégoire:** In the meantime, we are doing audits on SMS in the rail environment. We did a detailed audit of SMS in CN. We interviewed hundreds of workers and found deficiencies that we required CN to address. It ended up with the minister ordering CN to give us an action plan, which they did. Now we're following up on the implementation of that action plan.

To tell you today it is fixed and perfect—I don't think so. But we've seen improvements from the company, and hopefully they will continue over the coming years.

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

Mr. Zed has agreed to share his time with Mr. Bell.

**Mr. Don Bell:** To follow up on that question, when we got that audit report my recollection was—and you might correct the figures for me—that something like 50% of the locomotives and 30% of the rolling stock had some kind of fault.

**Mr. Luc Bourdon:** If I remember correctly, it was about 27% of the cars and 56% of the locomotives, something like that.

**Mr. Don Bell:** And about 14% of the consists were either in error or missing.

What have you done to address that? That's a pretty alarming figure, and I recognize that the range varied.

**Mr. Luc Bourdon:** For the consists, CN was prosecuted and pleaded guilty yesterday. They were prosecuted for inaccurate consists, so that's what we've done with this.

A lot of the defects on the locomotive were pretty minor, though, and they were considered safety defects that could not lead to derailments, such as a first aid kit that was missing a seal or an extinguisher that may have been used and was not recharged or something like that. We followed up after the audit with a section 32, and now we're following that section 32 to make sure that every area has been addressed by CN. What we're doing basically is focused audits, going back in those areas, doing more inspections, and seeing how it applies.

**Mr. Don Bell:** Will you be able to report back to us with an interim report, a follow-up to that audit we have?

**Mr. Luc Bourdon:** Yes.

**Mr. Don Bell:** With regard to my next question, Mr. Jean made reference to the problems of crossings, track, and suicides, and he dwelt on the issue of track. My understanding is that there were different standards, that the act itself—and I don't know what section, but it's section 10, 11, or somewhere in there—makes reference to engineering standards.

**Mr. Luc Bourdon:** It's section 11.

**Mr. Don Bell:** But they seem to be pretty vague. What can we do to help define what is the standard? Are there international standards, engineering standards, that we are not applying?

**Mr. Luc Bourdon:** There are, and we're using them—ARIMA.

**Mr. Don Bell:** Why aren't they in the act?

**Mr. Luc Bourdon:** This is one of the things, which is part of our submission, that we're hoping will be addressed. We need to flesh that out. It has to be more specific. As far as we're concerned, section 11 is a shortfall in the act right now. It's not specific enough.

**Mr. Don Bell:** Earlier you had commented on the status of the panel report. You made recommendations or suggestions to them. What is your understanding of the process of where that's going to go next, relative to our work?

**Mr. Marc Grégoire:** The minister will receive the report, will make it public, and then we will meet with the minister. You will look at the report, obviously. You may want to make your own recommendations. For each and every recommendation, the department itself will look at those recommendations and provide our own advice to the minister as to whether or not we should implement the recommendation. Is it going to require a legislative change? Is it going to require investment and money? Is it going to require changes in procedure, processes, organization, or whatever? We'll look at those one by one when we have the report, and then presumably the minister will make announcements on his decision as to where he wants to go. This is what happened with the previous act review.

**Mr. Don Bell:** I'd like to go back to the issue of inspectors, and I'm thinking of the CN audit in particular, but it would apply to others. On the number of inspectors, I think you say we have 86 inspectors, which is a number that doesn't seem to vary, and we seem to have about 20 or 25 office people to support those 86, as I gather. If with a consistent number of inspectors, if with that number of people, these kinds of problems still resulted, do we have an adequate number of inspectors on the ground and out in the regions?

• (1015)

**Mr. Marc Grégoire:** The reason we're embarking on the safety management system—it goes back about 10 years now, a little more than 10 years—is we did a lot of analysis in Transport Canada. We compared the safety records in all the modes of transportation. We looked at the accident ratio in aviation, marine, and rail, for instance, and these ratios were very low compared to what we found around the world.

We have asked some very renowned safety experts around the world what we should do, and I remember one who was very interesting, Dr. James Reason, a safety management risk expert who came to us. We had a conference with him and asked him if it would be safer in Canada if we put one inspector on board every plane, ship, and train. His answer was no, absolutely not, it wouldn't be. The only way to make it safer is to get in the heads of the CEOs and the operators. You have to make safety part of the thinking of the decision-makers in the industry, and if you're not there, you could be on board and you could have five times or ten times more inspectors and it wouldn't be safer. That's how we decided to embark on the safety management journey, because it's a cultural change, and we

need the CEOs of this world, in all modes, to commit to safety and to make safety an integral part of all of their operations.

**The Chair:** Go ahead, Mr. Shipley.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chair, and thank you, panel, for coming out this morning.

My area may be a little different from what the conversation has been.... How many of the accidents that have been reported are on short lines?

I don't know how that inspection works—I'm new on the committee—but I'm wondering. We talk about the accident rate improving, but many of the short lines are privately owned. Do you actually go in, then, with the vehicles? You talk about CN and CP each using some type of vehicle of analysis, and you've got what I would call a prototype vehicle that you're bringing on. Is that correct?

**Mr. Luc Bourdon:** It's not a prototype. It's a vehicle that has been proven to be very effective. It's a pilot project for us.

**Mr. Bev Shipley:** It's a pilot project. Thank you. Are there accident ratios on the short lines?

One of the reasons I ask the question is that some of the lines have sat idle for a while. Then a private entrepreneur comes along, sees value in that short line, and wants to pick it up. Often upgrades have to happen. What sort of inspection rate happens with that, and what is the accident rate on the short lines?

**Mr. Marc Grégoire:** Before we start, I should mention that for the most part, short lines are under provincial jurisdiction. They are not under federal jurisdiction per se. In many cases—and Luc can be more specific—we have signed MOUs with provinces to enable us to do the inspections on behalf of the provinces, but the short lines are, to start with, under provincial jurisdiction.

Luc, is it across the country?

**Mr. Luc Bourdon:** About 72% of the traffic is done by CN and CP, so most accidents are on CN and CP. We can provide you with an accurate number from TSB between short-line and—

**Mr. Bev Shipley:** I'd be interested to know, because it would seem there could be a higher risk factor with that.

One of the things I'm wondering about is the history of accidents over the last 10 years. Maybe you've done that, and if you have, I'll go back. I don't think building trends over one year actually cuts it. I would like to have a report that takes us back 10 years, and I would like to know why—and you have touched on it—there is a difference in reporting standards between the United States and Canada.

**Mr. Marc Grégoire:** We will provide to you, as requested by Mr. Bell, the stats we have for the last 10 years.

•(1020)

**Mr. Bev Shipley:** Thank you. One of the things Mr. Masse touched on was that in terms of tracks and crossings, the municipality gets billed every month for maintenance of tracks and maintenance of crossings. I can tell you, having been mayor of a municipality for a number of years, that I don't know where the letters go when they leave the municipality, but they never seem to land on the desk of anybody who actually does anything.

When I say that, I'm asking where the responsibility is. There is the rail line and Transport Canada, and the billing actually comes to the municipality for the crossing maintenance that never seems to happen. I don't know if the crossings become a safety issue for the rail line, but they certainly become a safety issue for the municipality, and I can venture to say that they will be a safety issue in areas with a rail line. We have often heard horrific stories of elderly or disabled people getting caught because of a lack of good maintenance.

Can you help me with that?

**Mr. Marc Grégoire:** First of all—Luc will continue—we don't have any program to award money to municipalities for maintenance, but we do have a contribution program for capital investments. We have contributions of approximately \$7.5 million a year that we give to railway crossing improvements across the country, but no money would come on a yearly basis to the same municipality for regular maintenance.

On the regulatory side, I'll let Luc answer.

**Mr. Luc Bourdon:** Usually maintenance depends on who was there first. If the rail line was there first and then a community was built and spread on both sides of the track and they have to make a crossing, the maintenance would probably have to be paid by the municipality because they came afterward.

**Mr. Bev Shipley:** I'm talking about maintenance on county roads that have been there. In fact, some of them are provincial roads, though they are mostly county roads that don't get repaired, though we get a maintenance bill every month. I don't know where the authority or the push comes from to make CN or CP look after them in a more rigorous manner.

**Mr. Luc Bourdon:** Billing and that aspect would probably be under the CTA, the Canadian Transportation Agency; however, at Transport we're now writing some new crossing regulations and access control regulations, and in the crossing regulations the railway and the municipality will have the joint responsibility to make a safety assessment of each of the crossings and come up with whatever they need to make that crossing safer.

To answer your first question, I looked very quickly and I would say the short lines are about 12% of all derailments compared to CN and CP.

**Mr. Bev Shipley:** Thank you.

**The Chair:** Mr. Watson.

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

I have a couple of questions on your statistics. I don't have the statistics in front of me, but maybe you can provide them to me. You

said in 2006 that the number of accidents, derailments, was down from 2005. Were they lower than 2004 and 2003?

You'll have to forgive me, I don't have that in front of me. I probably should.

**Mr. Marc Grégoire:** We have the 2002 figures with us. The accidents for all the railways, using the same period of January to October, in 2007 was the lowest in the last five years. The average was 1,441. In 2006 it was 1,410. The peak was 2005 at 1,523. For 2004 it was 1,459. For 2003 it was 1,429. For 2002 it was 1,383.

As I mentioned before, we'll provide the committee with the 10-year analysis of accidents.

**Mr. Jeff Watson:** Okay. That's the only question I have.

**The Chair:** With that, I'll open the floor and take individual questions from each member.

I have Mr. Laframboise, Mr. Masse, Mr. Maloney, and Mr. Bell.

[*Translation*]

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

First, what is the name of the car used in the pilot project?

•(1025)

**Mr. Luc Bourdon:** It's called a solid track. If you wish, I can send you information about it.

**Mr. Mario Laframboise:** I would love to see it.

**Mr. Luc Bourdon:** I'll send it to you.

**An hon. member:** Can we get it in French?

**Mr. Luc Bourdon:** I don't know if it is available in French, but I can send you the technical documentation; that won't be a problem.

**Mr. Mario Laframboise:** Good.

I have another brief question. How many railway companies do you monitor? Do they include smaller ones? We know about CN and CP, but are there others?

**Mr. Luc Bourdon:** If you include all the companies which have a certificate of competence issued to them by the Canadian Transportation Agency, there are 36 in total. Ontario has adopted the federal regulations, and it passed legislation whereby we manage its railroads. So that's 13 more. It's part of our everyday work. Further, as Mr. Grégoire said, we have signed memorandums of understanding with some provinces, including Quebec. Most provinces call on our expertise for all kind of things such as inspecting sections of track, or new tracks or equipment they have purchased.

**Mr. Marc Grégoire:** In Quebec, it is the Ministry of Transport of Quebec.

**Mr. Mario Laframboise:** So your 86 inspectors have to monitor 36 companies, plus another 13, plus any others?

**Mr. Luc Bourdon:** In total, CN and CP represent about 72 per cent of all railway traffic. They are responsible for most of the transportation by rail.

**Mr. Marc Grégoire:** Let's not forget VIA Rail.

**Mr. Luc Bourdon:** Indeed, there is also VIA Rail.

**Mr. Mario Laframboise:** Surely you also do monitoring and audit activities. Do you do this once a year?

**Mr. Luc Bourdon:** We take a risk-based approach in our audits. We concentrate on railway companies which we believe represent the highest risk of accidents. Of course, there are smaller railway companies with only two or three employees. These companies switch wagons from point A to point B. They are responsible for only a couple of kilometres of track. We inspect them once in a while; they rarely have any accidents and there is not much happening in that regard. Trains travel at very low speed on those tracks.

Most of our work is focused on CN, CP and VIA Rail.

**Mr. Mario Laframboise:** So basically you react.

**Mr. Luc Bourdon:** That is not true.

**Mr. Mario Laframboise:** You are not proactive, but reactive.

**Mr. Luc Bourdon:** We in fact look at all railway companies. If it has been one or two years since we have inspected a company, even if nothing has really happened, we figure it's time to drop by to see how things are and to make sure the system is as good as it was during the last inspection. We will do that even if there is no indication of anything specifically wrong with the track.

**Mr. Mario Laframboise:** That's fine, thank you.

[English]

**The Chair:** Mr. Masse.

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

I was interested when you noted the difficulty with the amount of percentages of railcars that had different regulations and efficiencies. You're right, a fire extinguisher wouldn't lead to derailment, but it could be a serious problem if there was a work-related incident or fire and so forth.

You mentioned you have 86 inspectors right now. How many inspectors did you have, say, for example, five or 10 years ago? Has there been a change in the inspector pool?

**Mr. Luc Bourdon:** There has been an increase of 12 in the last year, so there were less than that. But to say the least, it has been an extremely stable environment in the number of inspectors. So prior to 2001 we had a total, I believe, of 78 or 79 inspectors across the country, including Ottawa. Since then, we've added 12 more, so we have 101, and 86 are in the regions, but it hasn't moved at all since then.

Now, some regions have added, and we support that. I believe we put three additional inspectors in the British Columbia region, when CN made the acquisition of BC Rail.

**Mr. Brian Masse:** That's basically one per province or territory since 2001.

**Mr. Marc Grégoire:** With the 12, it was two each.

**Mr. Brian Masse:** But there are 12 in total, right? So in the last several years you've only had 12 additional inspectors added to the system, when rail operations have gone up significantly, including profits—and the usage and the accidents.

Has there ever been an analysis in terms of what would be the optimum number of inspectors that would be appropriate, especially

if the usage of the track is increasing, and there's a new mandate, say, for example, from U.S. security, which is one I gave an example on? Has there been that type of analysis?

• (1030)

**Mr. Marc Grégoire:** We always have discussion and debate about how many resources we should put into which modes. Should we put more people into road safety, where we kill close to 3,000 people a year, or should we put more people into aviation? It's a matter of choice. We make recommendations, and decisions are made as to the best way to appropriate the resources. What I can tell you now is that we make the most efficient use of the resources we have.

**Mr. Brian Masse:** I just find it ridiculous, given the extent of the rail increases we have, the geography we cover, the types of incidents we've had, and since 2001 only 12 new inspectors.... I just find that's not appropriate, given the increase in usage.

Thank you, Mr. Chair.

**The Chair:** Mr. Maloney.

**Mr. John Maloney:** Most provinces have adopted your federal regulations vis-à-vis the lines and operations. I assume this is a fee for service. But what percentage of your global inspection force is in fact assigned to short lines, or in fact does this vary from year to year? I appreciate that short lines perhaps don't have the financial resources that the larger operators have. Although they may operate at lower speeds, is there still a risk factor because they don't have the resources to do perhaps the necessary repairs to the road beds, the line beds?

Could you respond to that?

**Mr. Luc Bourdon:** The provincially regulated one, the last time we calculated how many resources are used on a yearly basis, was less than two FTEs. Those are the ones done through a memorandum of understanding. It depends on the requests we get, but it's less than two full-time employees a year dedicated to that.

**Mr. John Maloney:** Requests that you get.... So you are only called in—

**Mr. Luc Bourdon:** If they're provincially regulated, as I said, it's done through an MOU. For others it's a contractual agreement we may get at the beginning of the year, as they may ask us to do a certain part of their.... But we work for them. We don't provide any real oversight to the railway in those cases. We work on behalf of the province. So in Quebec, if we find that the track is defective, usually we'll talk to the provincial government and say, "This is what we found." They will deal with the railway.

**Mr. John Maloney:** Are the enforcement supervisions similar to

**Mr. Luc Bourdon:** In Ontario, we have enforcement powers. In other provinces, these may vary depending on what the MOU says.

**Mr. John Maloney:** Thanks, Mr. Chair.

**The Chair:** Mr. Bell.

**Mr. Don Bell:** Dwelling again on the issue of the inspectors, the audit report from CN in particular indicates that these numbers or problems with non-compliance and the percentages we talked about have grown, the numbers of the rolling stock, the engines, and then the issues of track inspection, for example.

I'm wondering if you could provide us with the powers the inspectors currently have. Regarding the issue we've talked about of providing additional strength, one of the things we'll be looking at as a committee is the recommendations to provide some teeth to the act. It seems to me that we need to empower the inspectors to be more like traffic cops and to be able to hand out fines—or parking tickets, if you want to call them that—right on the spot and to ensure we get quick action so that it's efficient.

My understanding from some of the information we heard—and I spoke with rail workers on this as well when I visited the Prince George site after the derailment there—is there seems to be an issue with bad orders and notices that are ignored or go missing or that are not acted on. I'm just wondering whether we have provided, in whatever legislative framework we have, adequate strength for those inspectors to act quickly and not to have to.... I don't know if they have to check with your office before they do things or if they have the power to act on the spot, because it seems that's very important.

We want to keep the rails rolling, but we also want them to roll safe. I'm very concerned about maintaining the economic strength of the railways, and by economic strength I'm talking about the economic backbone of Canada moving goods. But we also need to be able to deal with those deficiencies as quickly as we can.

The other aspect is the difference between Transport Canada and the Transportation Safety Board. I know we go back and forth. One, I gather, investigates accidents and the other deals with potential accidents.

Could you comment on that?

•(1035)

**Mr. Marc Grégoire:** I will comment. First of all, the present act does provide for inspectors' powers. They are described in section 28 of the act. Each of the inspectors, when we consider them ready to exercise their authority after they've been hired and trained, receives a delegation of authority. It's a formal paper that is actually given to them by Luc, who has the authority to give that to them.

But when we talked earlier about lack of teeth and lack of tools, we certainly were not looking to give our inspectors the power to give tickets. This is not the case in aviation; this is not the case in marine safety either. We would rather have monetary penalties. There's a big difference, especially in the recourse mechanism. The recourse mechanism that's being used now to allow the deviation for the recipients of penalties is the TATC, the Transportation Appeal Tribunal of Canada. Anybody who receives an enforcement action from Transport Canada or from a Transport Canada inspector can appeal this action to the tribunal. The tribunal can either change the decision made by the inspector or it can ask the minister to reconsider its decision.

This is where we would like to continue. It is relatively new for railway safety. It was only started five years ago, when the Civil Aviation Tribunal was transformed into the TATC, which now hears railway issues, and will start to hear marine safety issues next year.

The plan, or what we would like to have in the new act, is to have similar powers to what we have in the Aeronautics Act, and that is the authority to give monetary penalties. These are not normally decided on the spot. The inspector would make an inspection report and he would make a recommendation as to the amount, and then, as established in the Aeronautics Act, the company would be advised that they will receive a fine. There would be an informal hearing, if you want, with the company, and the fine could change after that hearing, depending on what additional information was provided. Then the fine would be given, and the company would have the opportunity to challenge that through the tribunal.

This is where we would prefer to go. If you want, we can provide you now with the delegation of authority paper and an example of what an inspector receives, if that would be useful to you.

**Mr. Don Bell:** On section 28. Okay, I'd appreciate that.

**The Chair:** Mr. Jean.

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

I want to go back a little bit to what I was talking about earlier, the machines versus the inspector—not “versus”; I guess they would be complementary to each other. These machines, I understand, detect cars, check the level of surface, check elevation, check whether there's any consistency or inconsistency in the track. Do they also have memory of going over certain tracks, to see whether the track has changed dramatically from the previous inspection four months before? Or is that not part of the deal?

**Mr. Luc Bourdon:** I'll have to check. I assume they would probably keep records of all of that. You probably want to know whether, on the spot, it will flag right away when there's a difference. I'll have to check on that.

**Mr. Brian Jean:** I'd really appreciate it. I know you have a lot of homework here, but if you could provide us with information on those two types of machines, I would be very appreciative.

**Mr. Luc Bourdon:** Yes, we'll get that to you.

**Mr. Brian Jean:** Obviously—in my mind, anyway—the machines would do a much more accurate job than a visual inspection by humans, at least from my perspective; my eyes aren't that good.

Is that fair to say, Mr. Grégoire?

•(1040)

**Mr. Marc Grégoire:** Yes.

**Mr. Brian Jean:** Is there an increase in the number of inspections—over, let's say, the number 10 years ago—that these machines do for our tracks across Canada?

**Mr. Luc Bourdon:** Yes.

**Mr. Brian Jean:** Have you information or evidence first-hand that these machines actually are successful in what they're doing when compared with a visual inspection by an inspector?

**Mr. Luc Bourdon:** There's no doubt that the technology provides a better level of inspection. The submission CN has done with the panel for the review of the Railway Safety Act, which is a public document available on their website, provided a very good document on all the technology they are using. They call that their "technology toolkit", or something like that. It is available; it describes everything you're looking for. It describes what a Sperry car is, what a track geometry car is, and every new technology—hot box detector, dragging equipment. It's a full document. It is very well done. It explains the concepts.

**Mr. Brian Jean:** Is this the CN submission to the Railway Safety Act review panel, the opening submission?

**Mr. Luc Bourdon:** No, it's not the opening one.

**Mr. Marc Grégoire:** They made many submissions.

**Mr. Brian Jean:** Is it possible to get a copy? My goodness, you have a lot of work to do.

**Mr. Luc Bourdon:** I can send you that, no problem. I think it's a very good document for everyone who wants to compare technologies.

**Mr. Brian Jean:** I do, actually.

Over the last 50 years, have we increased dramatically the amount of track we have in Canada?

**A voice:** No.

**Mr. Brian Jean:** In fact, isn't it the case that we've actually eliminated some of the track?

**Mr. Luc Bourdon:** Some were eliminated; some were transferred from the class 1 railways to short lines. This is a number that is available, which we can provide to you as well.

**Mr. Brian Jean:** Have we increased the amount of stock, the number of engines and cars?

**Mr. Luc Bourdon:** I'd say, from my knowledge, that cars that are Canadian property have gone down in the past few years, probably from 105,000 to about 97,000. However, that is not reflective of what is being used in Canada, because many of the cars are provided by car leasers.

**Mr. Brian Jean:** Is it also fair to say that the technology on the newer machines is much safer than the technology on the old machines?

**Mr. Luc Bourdon:** Yes. For instance, 4.3 million cars were being loaded in Canada in 2006, and that number increases slightly every year.

**Mr. Brian Jean:** So we have better machines and better technology, we have more inspections done by machines, which are more accurate, and we have fewer lines and less stock, and more inspectors?

**Mr. Luc Bourdon:** Yes.

**Mr. Brian Jean:** The last question I have for you is in relation to crossings themselves. My understanding is that it costs about \$200,000 to \$300,000 to put up one of the light crossings. Is that correct?

**Mr. Luc Bourdon:** That's the grade crossing improvement program. Yes.

**Mr. Brian Jean:** Is this the only way? Is there some sort of technology available between zero cost and \$250,000?

I have a huge rural constituency with a tremendous number of crossings, to be honest, and I have a lot of complaints from my constituents. How do we get those crossings that are currently not governed by these flashing lights and gates...? Is there some sort of technology or safety device that we could utilize that would be less expensive and just as intrusive?

**Mr. Luc Bourdon:** There are all sorts of things: stop signs, advance warning, synchronization between street lights and the crossing. But if the crossing is not protected... There's not much between being protected and not being protected, other than an advance warning letting you know that there will be a crossing after that curve. Other than that, there's not much.

**Mr. Marc Grégoire:** We also have another contribution program to close crossings. We really encourage people to come forward and propose closure of crossings and closure of the road, when that's possible, because it also improves safety to have fewer crossings.

**Mr. Brian Jean:** I know I'm out of time, Mr. Chair, but can I just ask how much money those advance warnings cost?

**The Chair:** I guess you already have.

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

**Mr. Brian Jean:** Thank you, sir.

How much does it cost for those advance lights?

**Mr. Luc Bourdon:** It's just a sign, so I don't know—a few hundred bucks.

**Mr. Brian Jean:** So it doesn't signal—

**Mr. Luc Bourdon:** It's not a signal; it's a sign.

**The Chair:** I have Mr. Bell and Mr. Fast, but I have one question.

Can you give me an example of where you would close a road?

**Mr. Marc Grégoire:** Some crossings are no longer used. These are mostly abandoned. Some roads are no longer used, and there's a new road not too far away from it. Rather than leaving such crossings open, which is an indication—remotely, but there are still accidents—we'd rather close them. We have a contribution program within which we give money to close those.

**The Chair:** Mr. Bell.

**Mr. Don Bell:** You talked about rules and regulations. I gather there's a distinction between them. Railways set their own rules, do they, and we set the regulations, which vary from railway to railway?

● (1045)

**Mr. Luc Bourdon:** There are two provisions in the Railway Safety Act for rules. There's section 19, which is for cases when the regulator orders the railway to develop a rule. There will be a timeframe and certain parameters that they have to meet; then they will file the rule with us, and the minister will approve the rule. Also, there's section 20, which allows the railways to develop rules on their own initiative, which they will file with the minister and the minister will approve. So in either case, the minister approves the rule.

The distinction between rules and regulations is that regulations apply to all railways, whereas some railways may have specific rules that apply only to them. Generally speaking, what we're trying to do is to have rules that uniformly apply to all railways, because it's becoming really hard for us to follow.

**Mr. Don Bell:** My question would seem to be that if individual railroads each have to develop their rules, and if there is some commonality, then you're, for want of a better term, reinventing the wheel.

**Mr. Luc Bourdon:** There's a provision in the act encouraging the railways to make sure they're consistent, but most of the railways are members of the Railway Association of Canada, and they provide a power of attorney to that association. The association usually files rules on their behalf, and all the ones that are signatory, which is the majority of the railways, adopt the same rules.

**Mr. Don Bell:** The final question relates to Mr. Jean's question, to some degree, in terms of track, but I think Mr. Shipley made the reference to municipalities and the concern about standards for crossings and standards for bridges, if you want to call them that—structures where the track is elevated or crosses a river.

Are there standards? Can you provide us with the references to that—

**Mr. Luc Bourdon:** Yes, I can provide you the reference, but not the standard, because they're big books. But we can tell you where they are, if you want to consult them.

**Mr. Don Bell:** And railway crossings?

**Mr. Luc Bourdon:** Yes, railway crossings and bridges.

**The Chair:** Let me interject here, with the bells ringing. We have a 30-minute timeline for a vote. To continue with the committee, I need unanimous consent to continue with a few more questions.

I have Mr. Fast and Mr. Masse left, and if we'd like to do that, I would allow them to finish their questions. Then what I'd like to do is have the room cleared to go in camera for about five minutes to determine what we're going to do with this draft report, and also to decide Thursday's business.

I'll go to Mr. Fast, and then Mr. Masse, very briefly.

**Mr. Ed Fast:** Messieurs Bourdon and Grégoire, if you would, please comment on this statement: perception reflects the current state of rail safety better than statistics.

Do you concur with that assessment, or do you disagree?

**Mr. Marc Grégoire:** I will just comment on it. I don't agree or disagree with it, but that's what SMS is all about. A company—and we've seen this in aviation—could conform to the regulations and to the legislation, but there could be some kind of feeling that there was a problem we were not able to pinpoint. With safety management systems you will find out about perceptions because you will interview the employees. You will talk to the people and find out not only whether they follow the regulations but whether they believe in safety.

Perception for those matters is important, but let's remind ourselves that perceptions are neither a fact nor a reality; they're only perceptions. Perceptions can vary between individuals, but it's important to find out what people think.

**Mr. Ed Fast:** Do you have any idea why the perception is different from what our statistical evidence tells us is the case—as you know?

**Mr. Marc Grégoire:** No, but in the transportation system in Canada, making sure the public perceives that it is safe is as important for us as its actual safety record. We tend to measure the perception of people by interviewing them, by doing surveys, asking if they think the transportation system is safe in Canada. If they say yes, that's one good thing. We also have to look at the evidence on whether or not it's safe.

We want both to be high. If people perceive that the system is not safe, even though it could be the safest, they won't travel. If they don't travel, it's not good for the economy.

**The Chair:** Mr. Masse.

**Mr. Brian Masse:** Am I correct that the funding program for road and rail separation that we used to have, which I think ended back in 2000, has not been reinstated at all?

**Mr. Marc Grégoire:** No, we have a program now. It's called the contribution program for improvements to railway crossings.

Oh, you were talking about grade separation. We don't cover grade separation.

• (1050)

**Mr. Brian Masse:** They used to have one at one point in time, did they not?

**Mr. Luc Bourdon:** That was before my time.

**Mr. Marc Grégoire:** It was before mine, too.

**Mr. Brian Masse:** Okay. I have nothing further. I'll stop.

**The Chair:** Mr. Carrier, very briefly.

[*Translation*]

**Mr. Robert Carrier:** When you refer to railway inspectors, are you referring exclusively to the field inspectors who inspect the tracks, or do some of them actually go into the offices where the safety systems are audited?

**Mr. Marc Grégoire:** There are three types of inspectors. There are the track inspectors, the inspectors of the railway operations, who board the locomotive and the VIA Rail cars, and who see how passengers are informed of safety procedures, and there are the inspectors who enter the offices to inspect the systems.

**Mr. Robert Carrier:** How many of those 101 inspectors work in each category? That will give us an idea of the numbers.

**Mr. Luc Bourdon:** They are divided into three categories: Those who inspect the locomotive and cars, those who inspect the operations, and those who inspect the engineering and the infrastructure.

An inspector generally starts with a visual inspection. If it is okay, fine. However, if the inspector wants to dig a little deeper, he will go into the office. He will then look at documents, at the training program and at anything else which falls under his mandate. For example, he might look into when an employee was trained and then review the training program. He will also examine whether the employee is doing a good job or not. He will look at supervision. He will review all the methods and policies which are in place to support what he saw on the ground.

So inspectors have to do these two things in the course of their work.

**Mr. Robert Carrier:** Do you have inspection cars to specifically inspect the cars?

**Mr. Luc Bourdon:** Yes, because that requires special training. You have to begin by working as a track inspector, which means you acquire all kinds of knowledge. Then, you need extra training to learn how to operate this car.

**Mr. Robert Carrier:** So it's a specialty you have to offer.

**Mr. Luc Bourdon:** Yes.

[English]

**The Chair:** Thank you, everyone.

I thank you for attending today. If there are no other questions, I just have one before we leave.

When you talk about crossings, do you get complaints about individual crossings? Does it come to your hands, or is it done through an agency? For example, I have a terrible crossing on highways 1 and 5. What's the process to lodge a complaint and try to get some crossing arms or some sort of signal there?

**Mr. Marc Grégoire:** Normally, you'd start with the railway company. There's an agreement between the company and the municipality. The company will submit to us a request for contribution for that specific crossing, which sets out the sharing of costs between the municipality, the railway company, and Transport Canada.

**The Chair:** Okay. That's where we'll start. Thank you very much.

I thank you for being here. We're just going to take a brief recess for one minute and go in camera to discuss the preparation of the draft and also Thursday's business.

I'm going to ask everyone here who's not involved with this committee to just make their way to the door, and we'll get right at it.

[Proceedings continue in camera]

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