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CANADA

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

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**EVIDENCE**

**Thursday, February 17, 2011**

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**Chair**

**Mr. Merv Tweed**



## Standing Committee on Transport, Infrastructure and Communities

Thursday, February 17, 2011

• (1535)

[English]

**The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)):** Good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 49.

Pursuant to the order of reference of Wednesday, December 8, 2010, we are dealing with Bill C-33, an act to amend the Railway Safety Act and to make consequential amendments to the Canada Transportation Act.

Joining us here today, from the Urban Transit Authorities, are Mr. Gregory Percy, vice-president, operations, Greater Toronto Transit Authority; and Nancy Fréchette, vice-president, operations, Agence métropolitaine de transport.

Joining us live, via video conference, from Surrey, British Columbia, is Mr. Doug Kelsey, chief operating officer, Greater Vancouver Transportation Authority—TransLink.

Thank you. Good afternoon, everyone. We've reviewed what the process is, so if you would, please open with your comments, and then we'll move to committee questions.

**Mr. Gregory Percy (Vice-President, Operations, Greater Toronto Transit Authority; Urban Transit Authorities):** Thank you.

We are urban transit authorities, publicly owned and funded transit regulatory authorities, established under provincial law, with local and regional mandates and accountability. We are committed to safe operations, and our safety records and investments show this.

Bill C-33, as presently written, would impose inappropriate, inefficient, and expensive burdens and risks on urban transit authorities, burdens and risks that cannot be justified or fulfilled, in our view. The three largest UTAs representing commuters in Vancouver, Toronto, and Montreal—a total of more than 65 million riders annually—make this joint submission to this committee to ask that amendments be made to this legislation. We have shared interests and shared challenges, and we all serve the same public: the taxpayer.

In particular, we request that this honourable committee amend the definition of “company” and “local railway company”, which inappropriately but inevitably include UTAs, which already fall under provincial jurisdiction. We also ask that the committee exempt UTAs from the bill's requirement to apply for federal railway operating certificates.

The bill's definition of a local railway company expands the application and provisions regarding rules and all the proposed administrative and other compliance and filing measures in the Railway Safety Act. In our view, this is unjustified. Parliament has already acknowledged that the UTAs have a distinct and unique public nature. UTAs fall under provincial jurisdiction; each is subject to the special provincial legislation that created them and gives them authority.

We are governed by boards of directors that oversee and are responsible for the professional management of our commuters and other integrated operations. We are already subject to rigorous special checks and balances and taxpayer demands and public scrutiny, which differentiates us from commercial freight operators. UTAs are already publicly accountable, committed to safety, and committed to serving local taxpayers.

We encourage you to question the authority of Parliament to enact laws that impose new obligations and liabilities on provincial entities that are already responsible and accountable. You must question a bill that extends the reach of the federal minister to regulate and certify a provincial urban transit authority and to affect its local public mandate.

None of the urban transit authorities in Canada own all of their own railway lines. They operate on federally regulated host lines, which are owned by federally regulated railway companies. The UTAs enter into contracts with those same host companies to ensure the safe management of the railway. These agreements require the UTAs to undertake extensive and onerous responsibilities and to incur substantial liabilities for their passenger operations. These include the acquisition of insurance coverage, as required by the host railways, which agree to maintain their lines in conformity with existing federal laws and prevailing standards. In exchange, the host must offer a safe railway upon which to operate.

UTAs have no authority over the host railway to inspect or audit them. We cannot manage their infrastructure or staff or contractors. We cannot hold the host accountable if the host departs from required federal standards. It makes no sense, therefore, to require UTAs to be accountable for their hosts' actions as part of a federal certification requirement or as an extension of federal regulatory oversight.

Safety is at the heart of this legislation, and it's important to put on the record that TransLink, Metrolinx's Go Transit, and Agence métropolitaine de transport have operated and continue to operate among the safest railway operations in Canada. It cannot be said that Bill C-33 was introduced because of any safety concerns about passenger trains operated by UTAs in Canada. Transport Canada's representatives must concede and have in this committee conceded this.

The report of the rail safety review panel identified no pressing regulatory issue or concern in relation to UTAs. It did not find any need or justification for making a legislative change to sweep us unnecessarily under federal oversight, which would duplicate existing provisions and processes, would be neither flexible nor efficient, and would not really add to safety.

Bill C-33 is in error in attempting to hold provincial UTAs and their senior officers accountable for what they themselves cannot reasonably control or direct on the lines of federal railways.

The bill also contemplates extensive new obligations to keep and preserve records in order to comply with the federal minister's demand for information. This is another onerous, expensive, and totally unnecessary requirement to which UTAs should not be required to submit. We already have reporting and documentary obligations to our constituting authorities. Here again, Bill C-33 proposes another onerous, expensive, and totally unnecessary burden on UTAs.

● (1540)

All of these proposals in Bill C-33 represent considerable costs for UTAs. Unlike commercial freight railways, UTAs, by their very nature, have no means to recover all of their costs. Additional expenses caused by unnecessary and burdensome requirements will ultimately mean that either taxpayer and commuter support of UTAs will increase, or that necessary growth in urban transit will be constrained, or that service to the public will be reduced, all because of an unnecessarily broad definition of "company" or "local railway company".

For all these reasons, we, the urban transit authorities of Vancouver, Toronto, and Montreal, ask this honourable committee to amend the provisions in Bill C-33 to exempt urban transit authorities, already recognized and federally defined, from the scope and application of the bill. In particular, exempt UTAs from the newly defined terms "company" and "local railway company" and from the requirement to apply and qualify for a federal railway operating certificate.

We thank you for this opportunity to make these submissions. I'd be pleased to entertain any questions.

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

We'll go to Mr. Dhaliwal.

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Thank you, Mr. Chair.

I would like to thank both of you and Mr. Kelsey, who is from my hometown, Surrey.

Federal crown corporations and provinces are exempt from monetary penalties under Bill C-33. Does that apply to the provincial crown corporations and local transit authorities as well, or should it?

**Mr. Gregory Percy:** If I understand the question, you're talking about monetary penalties for non-compliance. Is that what you're saying?

● (1545)

**Mr. Sukh Dhaliwal:** Right.

**Mr. Gregory Percy:** In our view, that's unnecessary from a UTA perspective. We think that we already have the rigour in our safety process and it does not require that extra layer of rigour. In our view, it should not apply to urban transit authorities.

**Mr. Doug Kelsey (Chief Operating Officer, Greater Vancouver Transportation Authority (TransLink), Urban Transit Authorities):** I would like to add that part of a monetary penalty, I would have to believe, is intended as a consequence for poor behaviour. I believe, in our case, that we have other significant accountabilities and checks and balances so that this in fact is not warranted. Let me explain, if I may.

First, we are a product of government, and we consume taxpayer dollars. What goes with that is freedom of information. We are subject to scrutiny through the Freedom of Information Act, which allows media and the public at large to keep us under intense scrutiny. In addition to that, we also have a very public-board type of legislation.

I think the monetary penalties are not required for our existing performance or on a going-forward basis because of all these other accountability mechanisms that are in place.

**Mr. Sukh Dhaliwal:** The committee was told that right now, if one of your cars has some unsafe wheels, Transport Canada has to go after CP or CN. Why shouldn't they be able to contact you directly?

**Mr. Gregory Percy:** We would have no problem with Transport Canada contacting us directly. But I would add that the model today works. Again, our safety record is admirable.

You are correct, Transport Canada goes through the class one railways today. We'd be more than pleased if they came directly to us. Our view is that they should be able to do that, but we don't feel that Bill C-33 is the mechanism to enable that to happen.

**Mr. Sukh Dhaliwal:** Through what mechanism would you like to see that happening, then?

**Mr. Gregory Percy:** We would have no problem working with Transport Canada to create our own memorandum of understanding in terms of the rigour they feel is appropriate to manage safety with us. Again, we hold ourselves up to high standards. But we are more than pleased to work directly with them in a different set of circumstances from what is outlined in Bill C-33.

**Mr. Doug Kelsey:** To help add to the response, I'm just going to hold up here an example of a Transport Canada inspection sheet on West Coast Express here in Vancouver, where in fact Transport Canada has inspected us directly, not even through the railways. So in this case it's just a small list of things like decals and such that needed to be replaced. So that mechanism does exist today in actual practice.

So if we relate it to whether there is legislation that is required here, I think for our perspective the answer is absolutely no. That must mean there is some significant behaviour in the relationship with urban transit authorities that should be put in place to correct something that is absent. As an example, this inspection sheet helps fulfill that.

To support this, we also use a safety management system. In fact, we help train Transport Canada officials on actually how to use and implement the safety management system. So they have been through verification processes with us.

Therefore I come back to whether legislation is required as it relates to urban transit authorities. From my perspective, the answer is it is absolutely not required, when in fact—just make the request.

**Mr. Sukh Dhaliwal:** Mr. Kelsey, Transport Canada told our committee that you asked for them to audit your safety management system but they do not have any jurisdiction to do so. So why shouldn't we give them that jurisdiction so they can come and audit?

**Mr. Doug Kelsey:** You don't always need the legal instruments and legislation to do sometimes the right thing. The examples I just outlined for you do not require legislation at all. We invite not only Transport Canada in to do inspections, we invite all types of people in to inspect us.

In fact, part of our own practice is we go and get external third parties to help look inside our business to help us be on top of our safety game, if you will. So I don't think the legislation is required that supports it at all.

•(1550)

[Translation]

**Ms. Nancy Fréchette (Vice-President, Operations, Agence métropolitaine de transport, Urban Transit Authorities):** Allow me to add...

[English]

**Mr. Doug Kelsey:** I'm sorry. I would also like to add that if we go back to the 2006 Railway Safety Act review, I believe there were

something like 56 recommendations specifically in that extensive piece of work, and not one of them was related to the need to shape new behaviour for our agencies.

And if you then take that and look at Transport Canada's existing behaviour around risk-based inspections, I think one would conclude that our own risk profile and behaviours are such that they inspect us relatively infrequently, but they're welcome any time. But it really would lead to whether the legislation is appropriate for the behaviours that are absent. I would suggest no.

**The Chair:** Ms. Fréchette.

[Translation]

**Ms. Nancy Fréchette:** Thank you.

In fact, I wish to state that AMT is already in compliance with the Railway Safety Act through the contractual agreements that we already have with the railway companies. The railway companies are required to respect the Railway Safety Act regulations.

We must remember that the Act aims, first and foremost, to regulate the safety of those railways that fall under the jurisdiction of the federal government as well as those belonging to host railways, such as CP and CN. These railway companies impose upon AMT consequential requirements, for example in the area of costs, in order, precisely, to respect all of these regulations.

Furthermore, this bill appears to us to be impracticable given that CP and CN will not allow us to interfere in their internal management, which is very important to mention. Also, AMT has no authority to impose anything on either CP or CN.

**The Chair:** Thank you.

Mr. Gaudet, it is now your turn.

**Mr. Roger Gaudet (Montcalm, BQ):** I would like you to follow up on the answer given in response to Mr. Dhaliwal's question.

Do you not believe that if AMT becomes subject to the Railway Safety Act, Quebec will be required to report to federal authorities, which would be contrary to the Constitution?

**Ms. Nancy Fréchette:** In the present situation, AMT fulfils the primary objective of the bill. Indeed, we fail to understand the purpose of the proposed change, other than to interfere in an area of provincial jurisdiction.

At the Transports Québec level, there is legislation that applies, namely the Act to Ensure Safety in Guided Land Transport. We therefore have that possibility, through the province; we have the act and the regulations. Further, our province can mandate Transport Canada or another authority, and we respect the authorities that are in place.

Therefore, in Quebec, we are already regulated by our legislation. And when we find ourselves in federal territory, we are in compliance, because we have contracts with the railway companies whose lines we use.

**Mr. Roger Gaudet:** You have just stated that Quebec railway companies use federal railway lines, under contract with CN and CP, who are both subject to the Railway Safety Act, and already ensure that the rules and standards are applied and respected.

Does Transport Canada not already have the necessary authority to ensure that these companies falling under federal jurisdiction respect the requirements of the Railway Safety Act? In your opinion, why has such a burden been imposed upon railway companies in Quebec such as AMT?

**Ms. Nancy Fréchette:** I will somewhat repeat what I stated earlier in response to your previous question, because I was perhaps not clear enough. We have a provincial law, and therefore, in this case, it truly is, in our view, a matter of interference in an area of provincial jurisdiction.

With regard to your last question, as I was saying, AMT is already in compliance with the Railway Safety Act, through the contractual agreements that we have with the railway companies, which are required to respect the Railway Safety Act Regulations. This is why I am of the view that Transport Canada already has sufficient levers to enforce the regulations that are in place.

• (1555)

**Mr. Roger Gaudet:** Do you believe that, with Bill C-33, the requirement on the part of provincial companies to adopt these standards will amount to duplication, bringing about useless additional costs which will in reality be passed on to taxpayers and users?

**Ms. Nancy Fréchette:** Indeed, the bill would hold AMT responsible before Transport Canada of the host companies, which implies a weighty obligation and also represents a duplication of the railway safety work already being done.

**Mr. Roger Gaudet:** Mr. Percy, is the situation the same in Toronto?

[English]

**Mr. Gregory Percy:** Yes, it is, although we have an excellent working relationship with Transport Canada. We don't need to change the relationship to make it work; it's working very well today. And whether it's through the class one railways or in some cases, as pointed out by Doug Kelsey, that Transport Canada works directly with us today, it works very well. So, again, our view would be don't change something that already works.

[Translation]

**Mr. Roger Gaudet:** Mr. Kelsey, in Vancouver, what do you think of Bill C-33?

[English]

**Mr. Doug Kelsey:** I'm of the belief, as others have already commented, that, again, it's not required. I think we've all tried to approach our business as if the taxpayer were sitting in the room with us as we conduct our business. What is reasonable and appropriate? Looking at this legislation, very clearly, in the definition of an "urban transit authority", if I look in Vancouver, by our own provincial legislation we also have responsibility for roads, for bridges. Even at the commuter rail, we have parking lots. We have all kinds of technical things that I think are even beyond the

contemplation of what the definition of UTA might be within this legislation.

I think also, specifically, that you also do not want multiple regulators, whether provincial or federal, dealing with somewhat similar interfacing responsibilities. I think what's really important here is we do not want to harm our relationship with the class one railways. It's very important in an operating sense. And we're quite comfortable through and with Transport Canada to continue this relationship. To Mr. Percy's comments earlier, I think we're all very proud of our leadership relationship with Transport Canada, and we really want that to continue, but it doesn't mean you need regulation to accomplish this.

In my mind, legislation should be indicative, in the case of urban transit authorities, that all other avenues have been exhausted. And I would suggest MOUs have not been attempted, other practices have not.... If there are things that are missing, we should absolutely further that conversation, but legislation, in my mind, as it relates to us, should be absolutely a last and needed option. So I'm very supportive of the positions of both Ms. Fréchette and Mr. Percy.

**Mr. Roger Gaudet:** Merci, monsieur.

**The Chair:** Mr. Bevington.

**Mr. Dennis Bevington (Western Arctic, NDP):** Thanks, Mr. Chair.

And thanks to the witnesses for coming today.

I see you have some very important issues surrounding this particular legislation. I would really appreciate it if you could present those arguments in written form at some point in time to us in committee, so that we can examine them in more detail. This is something that I think would be really helpful.

**Mr. Gregory Percy:** We actually did provide a technical paper much more substantial than my speaking notes, in French and English, which we'd be happy to give you another copy of.

**Mr. Dennis Bevington:** Okay, thanks very much.

Basically, when you're talking about regulation within the urban transit authority, how does it divide between municipal, provincial, and federal government right now?

**Mr. Gregory Percy:** The municipalities are more.... They are not in terms of railway regulation; they are more involved in terms of the railroads as interfacing with communities, in terms of adhering to municipal guidelines in terms of how we build certain things. It's mainly—

• (1600)

**Mr. Dennis Bevington:** For instance, level crossings?

**Mr. Gregory Percy:** Fences, level crossings, that kind of thing, graffiti, garbage, things like that. Those are important neighbourhood issues, as I would call them.

**Mr. Dennis Bevington:** They are huge safety issues as well. We see most of the deaths that are occurring in relationship to railways right now are occurring because of access and level-crossing issues.

**Mr. Gregory Percy:** That's true.

**Mr. Dennis Bevington:** Is that the same for Canadian urban transit authorities?

**Mr. Gregory Percy:** I would say it's the same for the railway industry in North America. By definition, railways are porous. You can argue this one at length, but right to the land use planning, if you put a school on one side of the tracks and a strip mall on the other, kids take the shortest distance between two points.

**Mr. Dennis Bevington:** Okay. Where do the standards come for those things for the urban transit authorities?

**Mr. Gregory Percy:** Transport Canada has certain standards, and we certainly follow those. There are specific engineering standards through AREMA, the American Railway Engineering and Maintenance-of-Way Association, which is a North American-accepted engineering standards association. We adhere to those.

So we already adhere to—

**Mr. Dennis Bevington:** And a municipality, does it set standards in terms of where you can provide access—and where you don't provide access, where you might provide pedestrian overpasses, where you might do fencing?

**Mr. Gregory Percy:** They are stakeholders to that, yes. They get involved in setbacks, that kind of thing, for fencing and structures.

**Mr. Dennis Bevington:** So you'd say that if the municipality is doing that, then the standards are not the same across the country?

**Mr. Gregory Percy:** Some are.

**Mr. Dennis Bevington:** Is there a best practice?

**Mr. Gregory Percy:** Absolutely there are, and I would say the freight, the inter-city passenger train, and commuter train all take the high road and adhere to the higher standard because it's good business to do that. But they may vary across Canada; I can't really speak to that that well.

But I did just want to speak to the difference between provincial and federal. Certainly the Province of Ontario does not regulate railways itself. They actually have an agreement with Transport Canada to regulate on their behalf. That's specific to short lines and freight railways, and commuter as well.

Commuter is different. I'll give you an example. With GO Transit, GO actually owns, and in April will own 61% of its rail corridor, and is deemed unregulated. This Bill C-33 deals, for us, with the other 39%, which is where we run over CN or CP.

**Mr. Dennis Bevington:** Could you repeat that, please?

**Mr. Gregory Percy:** Certainly. GO Transit actually owns or will own 61% of the corridor over which it operates in April of this year. The province has supported GO in acquiring its own corridor from the class ones. So GO's interests for Bill C-33 deal with the other 39%, where we run over CN or CP rail.

We are deemed unregulated for the GO-owned corridor. We have already approached Transport Canada, saying that we're uncomfortable with that and would like their regulation. We're actually working with Transport Canada and the province, through MTO, on how we create that regulation over GO-owned track today. I'd like to think that's representative of the fact that we want to be regulated.

We're comfortable with being regulated, but it's a different form of regulation from what is outlined in Bill C-33.

**Mr. Dennis Bevington:** It seems to me that it's very complex already. It's not an easy matter to deal with the regulations.

[*Translation*]

**Ms. Nancy Fréchette:** I might add that, in Quebec, we have the Act to Ensure Safety in Guided Land Transport, that covers the entire territory of the province. As far as provincial jurisdictional issues are concerned, we are regulated by the province.

With regard to best practices, that Mr. Percy spoke of, we set benchmarks, if I may use the term, based on the best that exists in the world. Furthermore, we belong to the APTA, the American Public Transportation Association, and we work with the UTP in Europe so as to ensure that we have the best practices.

Within the territory of the province, on those railways belonging to railway companies, it really is the federal regulation that applies, and the companies are responsible for enforcing it. For our part, within our contractual arrangements, we ensure that they respect federal legislation. One of the differences resides in the fact that we are to ensure that those authorities responsible for the railways respect this regulation. That is where we find that an additional responsibility, that does not fall under our jurisdiction, is imposed, given that this is also interference. Furthermore, it adds considerable costs for the transportation agencies. In the end, it is the taxpayer who pays for these costs.

●(1605)

[*English*]

**The Chair:** Thank you.

We'll go to Mr. Watson.

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

Thank you to our witnesses for appearing here today.

I don't know. I think in putting your best foot forward you're almost making the argument that you should have nothing to fear from being regulated under Bill C-33.

Let me just make sure that I understand this correctly in terms of accountability. It's your position, and you can correct me if I'm wrong, that you want to remain accountable to CN and CP through the terms of your contracts with them instead of having a direct regulatory relationship with Transport Canada with respect to Bill C-33. Am I understanding that? Is that a fair summation?

**Mr. Gregory Percy:** Today Transport Canada goes through the class one railways on certain ways that we run our businesses. For other pieces, we go directly to Transport Canada without going through the railways. We would say that this works today.

**Mr. Jeff Watson:** Is that a yes or a no to my question?

**Mr. Gregory Percy:** I would say that it's a yes.

**Mr. Jeff Watson:** So I did understand it correctly.

For the record, with respect to the railway safety review report, CN, in its ranking by the expert panel on safety culture, gets a one out of five, and CP gets a two out of five.

You mentioned GO's future plans with respect to purchasing rail corridor to the point that there would be 61% ownership. What is the percentage of ownership of rail lines for GO currently today?

**Mr. Gregory Percy:** It is 54%.

**Mr. Jeff Watson:** It's 54%, okay. What about UTAs more broadly speaking? How much federal track are they running on versus provincial? I'm told that it's somewhere close to 80% when you take the national number in.

**Ms. Nancy Fréchette:** For Montreal AMT, at least 90% will be federal.

**Mr. Jeff Watson:** And from Vancouver?

**Mr. Doug Kelsey:** The West Coast Express in Vancouver is 100% on Canadian Pacific Railway.

**Mr. Jeff Watson:** Right. I mean, if you're running on federal track, it would seem almost logical to me that you should be federally regulated if anyone else who is running on that track has to be regulated.

You already have costs to comply indirectly, do you not, by virtue of your relationship of running on federal track? Are there not indirect costs to comply with federal regulation?

**Ms. Nancy Fréchette:** I'm sorry, I didn't hear you.

**Mr. Jeff Watson:** I'm sorry. The question was whether or not UTAs experience costs of complying with federal regulation indirectly by running on federal rail lines.

**The Chair:** Mr. Kelsey.

**Mr. Doug Kelsey:** Right now the indirect costs are reasonable. But if you look at the bill as it's written today, you can see the legislation as taken in proposed subsection 17.4(2):

A railway operating certificate may contain any terms and conditions that the Minister considers appropriate.

**Mr. Jeff Watson:** But you're going to be consulted on—

**Mr. Doug Kelsey:** That, to me, is carte blanche.

**Mr. Jeff Watson:** The act also provides that you'd be consulted with respect to what requirements go into regulation. That's not satisfactory, that Transport Canada would gain an appropriate understanding of the unique aspects you face as an urban transit authority?

**Mr. Doug Kelsey:** Consultation is a relative thing. I would suggest that the consultation on this bill has been minimal, frankly, behind the scenes, with us. I would really question the degree of consultation here.

For me, the fact of the matter—and the reason we're here today—is that we weren't consulted in, I'd say, a serious manner; otherwise, I don't believe this would be justified to be here.

**Mr. Jeff Watson:** What new costs would you be incurring? On one hand, I think Mr. Percy mentioned that there was the cost of keeping records; on the other hand, he argues we're keeping records already. I'd like to understand exactly what costs you would be incurring.

**Mr. Doug Kelsey:** I'd be happy to tell you.

On West Coast Express, I run a contract-out type of operation. I have it reduced to only 12 full-time employees who are fully active on all kinds of elements of the business.

If I go back to what I would consider to be a very successful Olympic Games in Vancouver, where I was head of the transportation, by government's involvement, they had a department of national exercises that were brought in to help us run exercises. It took years to run just one exercise to meet those requirements, when in fact under my own mechanisms, by doing it in a more commercial approach, I ran 13 exercises in 10 weeks.

There's a huge resource side that government, from its distance, through having the power, may be disconnected from the practicality and the nimbleness of being appropriate.

● (1610)

**Mr. Jeff Watson:** Then why not shorten the relationship to a direct relationship? I don't understand the argument there. You have an indirect relationship that you're complaining about in that regard. Why not shorten it up and sit down and talk about what elements go into the regulation for a rail operating certificate? One thing I've learned about Transport Canada is that they've been very flexible and accommodating in a lot of ways in addressing safety issues.

As well, somebody brought up the issue of safety management systems and that they've invited Transport Canada to do audits of their system. Was that you, Mr. Percy? Are you the one who raised that?

**Mr. Gregory Percy:** We have a third party doing safety audits—

**Mr. Doug Kelsey:** I had raised that issue.

**Mr. Jeff Watson:** Oh, I'm sorry, Mr. Kelsey; that was you.

Transport Canada would need authority to do that. This bill provides that authority. Do you have any objection to that authority being established through Bill C-33? I mean, if you want them to come in and audit, they'd need the authority to do it by law.

**Mr. Doug Kelsey:** I don't think they need the authority. They just need to ask, as exemplified by past practices.

**The Chair:** I have to stop it there; I'm sorry.

Mr. McCallum.

**Hon. John McCallum (Markham—Unionville, Lib.):** Thank you, Mr. Chair.

[*Translation*]

**Ms. Nancy Fréchette:** Excuse me...

[*English*]

**The Chair:** I have to go Mr. McCallum. Perhaps you can answer in a future question.

**Hon. John McCallum:** I'd like to first ask each of our three witnesses a very simple question—namely, were you consulted in the process of the drafting of this legislation by the government?

**Mr. Doug Kelsey:** In the case of West Coast Express, no.

**Mr. Gregory Percy:** GO Transit had a representative on a review committee later in the process.

**Ms. Nancy Fréchette:** We didn't participate.

**Hon. John McCallum:** No. Thank you.

I don't necessarily disagree with you, but I want to put forward one point of view and see what your reaction is.

It could be argued that if a railway is operating on federally controlled track, the federal government has a responsibility to ensure that anyone using these tracks is doing so safely, and failure to do so could be construed as an abdication of federal responsibility, especially if there were, God forbid, a severe accident. Then we would have abdicated our regulatory responsibility.

How would you react to that point of view, Mr. Percy?

**Mr. Gregory Percy:** The commercial contract today between our commuter rail agency and a class one requires the class one to keep the railway corridor and whatever aspect of operations they are involved with consistent with all safety standards that exist today. We pay for that privilege today, and as federal railroads they have to apply to federal standards.

**Hon. John McCallum:** Thank you.

Mr. Kelsey.

**Mr. Doug Kelsey:** I would very much echo Mr. Percy's comments. I would also add, from an oversight perspective, that there is a very good trail of due diligence in the relationship between the federal government, Transport Canada, and ourselves around the existing relationships that go on, inspections, as I've already indicated.

For me, there can be quite appropriate responsibility but without unique legislation.

**Hon. John McCallum:** Madame Fréchette.

[*Translation*]

**Ms. Nancy Fréchette:** Thank you.

I would like to add to the information provided by my colleagues.

The contractual agreements we have with the CN and CP railway companies deal, among other things, with standards and regulations, namely the requirement on the part of the railway companies to

respect the Railway Safety Act. Furthermore, these agreements outline the ability for agencies to go and see for themselves what is happening on the railways.

It is unfortunate that Mr. Watson is not in the room. We were talking about costs, earlier. Today, we already pay a high price for access rights in order to use these railways. If the costs go up, we will be forced to double the management structure that exists within the railway companies in our part of the country. This will lead to a duplication of the tasks and the costs, and we will unfortunately have to pass this on to taxpayers.

One must certainly question the value added by these measures. The bill...

• (1615)

[*English*]

**Hon. John McCallum:** I'm sorry, I'm running out of time and I have one more question, which I'd like to try to get you all to answer. It is a little bit repetitive of earlier questions, but I wasn't quite clear on the answer.

The question has to do with the cost of any additional regulatory burden of obtaining this railway operator certificate. It may be that you have to do similar things under your current regulatory system and that such matters would not impose a large burden, or it may be that they would. I'm still not quite clear on that.

Maybe I could start with Mr. Kelsey.

**Mr. Doug Kelsey:** My own take on this is that through the relationship between Transport Canada and the class one railways, we're of the belief that there's nothing that can't be handled through the class ones for those who run on their tracks, including commuter rail operators. The class ones own the assets and infrastructure. I say that because in the case of GO Transit, a significant portion is owned by GO Transit itself.

We are happy to comply and even invite in, as part of the inspection process, as to how this might actually play out, by Transport Canada overseeing the class ones, and those that run on their infrastructure, like ourselves, could also be conducting those sample inspections if need be, or other inspections, through the class one by coming on our rolling stock and the like. So I think that mechanism would work quite effectively and still give Transport Canada the appropriate accountabilities and checks and balances.

**The Chair:** Thank you.

Monsieur Plamondon.

[*Translation*]

**Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ):** Thank you, Mr. Chairman.

Ms. Fréchette, you talked earlier about costs. Mr. Watson was absent from the room for a minute, very understandably so, and I would therefore like you to repeat what you stated in his absence with regard to costs. Our two other witnesses provided answers with regard to the costs, but you did not answer Mr. Watson's question. I am allowing you time to outline these costs, for information purposes.

**Ms. Nancy Fréchette:** With regard to the costs...

[English]

**The Chair:** Excuse me. We have Mr. Watson on a point of order.

**Mr. Jeff Watson:** Mr. Chair, I don't believe that it's appropriate to comment on whether members are present or not present. I believe that's out of order.

[Translation]

**Mr. Louis Plamondon:** I stated very respectfully that Mr. Watson had stepped out for a moment, and with reason. I do not wish to launch a debate. I simply want to tell him that he missed one answer and that I am allowing the witness time in order to provide that answer to him.

It is my hope, Mr. Watson, that you like to be informed.

[English]

**The Chair:** It is ruled a point of order, but I know that it was meant out of respect and to just have the answer repeated.

I will ask the witness to answer the question.

Thank you.

[Translation]

**Mr. Louis Plamondon:** Voilà.

**Ms. Nancy Fréchette:** When we use federal railways, we have contractual agreements with the railway companies that require them to respect the Railway Safety Act Regulations. Therefore, based upon what we pay, we are certainly financing a portion of these tasks that serve to ensure that the railway companies are abiding by the regulations. If we are to carry out the same verification work, we will be responsible and accountable, as is presently set out in the bill.

This would mean that there would be an overlap between the management infrastructures. Unfortunately, such infrastructures come with a cost. Given that we are not a for-profit undertaking, a private enterprise, but a publicly-owned corporation, it is taxpayers who will be forced to pay for all of this.

There is also the matter of the value added through this. The act fulfils an objective. This objective will not be met if agencies like ours are included, because we achieve good results in the area of safety. We have a provincial act regarding railway safety. As for the federal laws we fall under, we respect them through contracts. This requirement would therefore be very costly.

You talked about the railway operator certificate, but the requirements pertaining to it are not defined. You mentioned that there might be consultations. As Mr. Kelsey stated, we would have liked there to have been consultations pertaining to Bill C-33, but there were none. Therefore, there is legislation and there are intentions, and we are going to work on what has been proposed.

• (1620)

**Mr. Louis Plamondon:** Thank you, Madam Fréchette.

With regard to safety, has your agency been involved in numerous serious accidents, such that the desire here, among other things, is to double safety inspections?

Mr. Kelsey stated that operations in his region are very safe, that the authorities are satisfied with the results safety-wise in the Vancouver area. The situation seems to be the same in the Toronto area. What about the Montreal region?

**Ms. Nancy Fréchette:** As far as AMT is concerned, we have never had to report a single incident involving safety. As I mentioned, 90% of our trains run on federal property track and 10% of them run on our network. To date, we have not had to report a single incident.

**Mr. Louis Plamondon:** Therefore, you view this bill as a kind of useless overlap, given that the safety measures are already in place. Therefore, why double the number of officials enforcing the same rules, when we could be working on improving safety in some other way?

**Ms. Nancy Fréchette:** Precisely. There is a safety objective and there are measures. Those actions proposed in the bill do not fulfil that objective. In our view, there is an act in place and there are processes that are working very well. This is why we question accountability and responsibility obligations linked to very costly measures for a government enterprise. In any event, one must wonder at the added value and feasibility for agencies such as ours of involving ourselves in the internal management of the CN and CP railway companies.

**Mr. Louis Plamondon:** Do you share that opinion, Mr. Percy?

[English]

**Mr. Gregory Percy:** I would agree.

If I may, I'd like to give an example of the UTA, in this case GO Transit, actually even exceeding the standards set out by Transport Canada for safety at level crossings. As GO started to purchase rail corridors, we made the decision to maximize the safety of every level crossing. Transport Canada sets a certain standard based on activity of trains and cars. We said that irrespective of that, we will put lights, bells, and gates on every level crossing we own, and we invested in doing that.

We think that demonstrates good community responsibility and certainly a strong recognition of safety. As a public agency, we feel that's something we have to do. It's not a dollars and cents thing, per se. It's what we think is a level of safety that's appropriate for something we own.

**The Chair:** Merci, Monsieur Plamondon.

If I may, just before I recognize my other colleague, you've talked about cost and infrastructure. Do any of you have a ballpark figure?

**Mr. Gregory Percy:** I think the dollars are driven off the rigour in the railway operating certificate, and the detail is absent at this point really for us to put a dollar figure on.

**The Chair:** So you don't have a figure—you just know that it's going to be an increased cost of something?

**Mr. Gregory Percy:** Exactly. We do not have a figure, but the costs will be associated with a heightened level of due diligence compliance inspection.

I think the important thing that we could ask the committee to really understand is that under these circumstances we will go to the class ones and we fully expect them to say they will not show us their inspection and maintenance records because it is frankly none of our business. So we expect that to happen, and that speaks to the point of responsibility versus accountability.

**The Chair:** Thank you.

Mr. Jean.

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

Thank you, witnesses, for appearing today. I appreciate that.

I was quite concerned by something that was mentioned earlier. One of the cornerstones of this government's position on bills is to consult widely with the public. I was very concerned by your comments earlier that they didn't consult with any of you. So I immediately talked to the department officials who are here, and they indicated to me particularly the 15 public consultations that were advertised on the Internet and by newspaper around the country: in Ottawa, Montreal, Huntsville, Calgary, Edmonton, Ottawa, Vancouver, Kamloops, Prince George, Saskatoon, Regina, Winnipeg, Montreal, Quebec City, Ottawa, Moncton, St. John, Dartmouth, Halifax. It goes on and on and on about the consultations and the public meetings.

I understood they received 180 written submissions and more than 70 presentations. In fact on March 11, I think AmeriRail and Agence métropolitaine de transport actually appeared at this particular site visit, and again GO Transit in Toronto appeared August 5.

I just want to make sure for the record that people understand that there were public consultations throughout the country, and many of them, and they asked for written submissions.

Now, my question to you would be why you didn't make any presentations or written submissions if indeed you feel that strongly about it, so that we're not here learning about this today instead of some months ago, when the department was drafting that. That would be my question.

Bluntly, I don't want an answer on it, because I don't think it's important. It just tells me frankly that you're complaining about something that, in my mind, you're already required to comply with on federal tracks through a third party, and you don't want to comply with it for whatever reason. I don't really understand, and I would like to know what the costs are that you say you can't comply with because it's too onerous.

I don't understand why we're here today talking about this in this position. We have many high-profile accidents and derailments that have happened across this country, which brings us to this point today and many moves by the ministers to make rail safer. You carry the most precious cargo in the country and you're asking to be exempted from federal regulations because you are already safe. The most precious cargo in the country is passengers, and I don't understand why you wouldn't want that.

You mentioned earlier that it was an extra layer. I don't usually make speeches; at least I try not to. I just want to ask you if you have any problems with the objectives of the act, because the act says:

(a) promote and provide for the safety and security of the public and personnel, and the protection of property and the environment, in railway operations;

Do you have any problem with that?

• (1625)

**Mr. Gregory Percy:** Nobody could have a problem with that.

**Mr. Brian Jean:** Then:

(b) encourage the collaboration and participation of interested parties in improving railway safety and security;

Do you have any problem with that?

**Mr. Gregory Percy:** No.

**Mr. Brian Jean:** Then:

(c) recognize the responsibility of companies to demonstrate, by using safety management systems and other means at their disposal, that they continuously manage risks related to safety matters;

Any problem with that?

**Mr. Gregory Percy:** Of course not.

**Mr. Brian Jean:** And:

(d) facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety and security.

Is there any problem with that?

**Mr. Gregory Percy:** No, but please—

**Mr. Brian Jean:** My last one is that 3.1 specifies that the minister is responsible for the development and regulation of matters to which this act applies, including safety and security.

I would argue that actually the federal government would be negligent and the minister would be negligent if they actually did not monitor and regulate federal railways properly.

That's what I think the position is today. We have an opportunity and we've heard from many different parties: CN and CP as well as teamsters and unions right across the country that want this piece of legislation.

So what are the extra costs that will be such a burden as to not make sure that we as legislators and parliamentarians can keep the most precious cargo in Canada safe, and that is passengers? How much is it going to cost?

**The Chair:** I'll ask each witness to present, but we are very short on time, so please make it brief.

**Mr. Gregory Percy:** I think I actually responded to that question. Because the railway operating certificate is not specific about the obligations to be imposed, it's very difficult to come up with a cost estimate.

What I did say—and I think it would be echoed by my colleagues—is that the incremental cost is the cost of inspectors, compliance, and engineers looking at maintenance inspection records to validate accuracy. The degree of rigour is not outlined in the railway operating certificate, so you can't estimate it. But it's an incremental cost to what we're doing today, assuming the railways will even let you do it. I've said before that this is not information they would typically allow us to look at, because it's not our information; it's theirs.

**Mr. Brian Jean:** Can I hear from the other witnesses?

**The Chair:** Are there any other witnesses who have anything to add?

**Mr. Doug Kelsey:** First, on the consultation on the bill, I've been through other bill consultations in the past, and this was nowhere close to the same standard. If we go back to 2007 and the enactment of Bill C-11, we were highly included and contacted directly by Transport Canada. That is not the case here. I'll be honest, I don't spend all my time tracking the newspapers. But government to government, we have a very strong and proactive relationship. Frankly, the first time I heard about this was at second reading.

• (1630)

**Mr. Brian Jean:** You don't keep track of newspapers, but what could be more important than federal regulation of your very business? I think you would keep track of it. You knew this was taking place, sir, and you never made a written submission. Quite frankly, I don't think that's acceptable.

**The Chair:** I'm going to interrupt. The time has ended for this meeting. We have guests waiting to come forward.

I thank our guests for being here. We appreciate it.

We're going to take a short recess while our next guests come forward.

Thank you very much for your input.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1635)

**The Chair:** Welcome back to part two of three of today's meeting.

Joining us now at the table, from the Union of Canadian Transportation Employees, is Ms. Christine Collins, national president. On behalf of the United Steelworkers is Mike Piché, national representative. I know we have a new guest who I don't have on my list. Maybe you can introduce him, Ms. Collins, when you make your opening comment.

We are tight for time. I'll ask members to keep their questions as short as possible.

I will ask Ms. Collins to present.

**Ms. Christine Collins (National President, Union of Canadian Transportation Employees):** Thank you very much.

I welcome the opportunity to be here. With me is Michael Teeter, who is my technical advisor.

The Union of Canadian Transportation Employees is the national union for rail, aviation, marine, and road safety inspectors. All of our inspector members are Transport Canada and Transportation Safety Board employees.

For the past four years UCTE has been making the case to Transport Canada, to SCOTIC, and to other interested parties that as we increasingly move into a safety management system world, we require, to as great an extent as possible, a consistent set of principles that will apply for all modes of transport. We need this so everyone can better understand that the idea of having transport companies managing safety is a good thing and not a bad thing. A public understanding and confidence in the transportation safety system is critical for all modes of transportation, and especially for rail, given the rail safety performance over the last years.

The UCTE prescription for an enhanced public confidence in transportation safety as we increasingly move towards SMS involves the following principles:

In all transportation safety statutes, the government and the Minister of Transport are legally responsible, and this responsibility does not leave despite the delegation powers in transportation statutes. Therefore, any ministerial delegations should be very carefully applied, and they should be applied with considerable restraint.

We recommend that only fully trained government inspectors should be responsible for legislative and regulatory compliance and oversight. This inspection and compliance layer should be present and required in all SMS statutes.

Any delegation to non-government workers and organizations should be governed by a conflict of interest provision. Conflicts and perceived conflicts should never exist. Inspectors who are responsible for SMS certification and SMS operations should be different from those who are responsible for regulatory compliance and oversight.

There should be clear whistleblower protections and provisions for reporting to third parties, in all transportation safety statutes. These protections should also apply and be available to the government inspectorate.

The transportation statutes, including Bill C-33, should require the regulator to maintain the highest level of safety. This level should be clearly and unambiguously defined in either legislation or regulations, or both.

I will say that UCTE has an excellent relationship with Luc Bourdon, director general, and with his staff at rail safety. We support Bill C-33 in principle, and like the other unions you have had before you, we do have some specific suggestions for change.

Let's face it, rail is a bit different from aviation or marine; there are fewer operators. SMS is not being certified and then handed off to the private sector. SMS is being implemented with regulations approved by the Governor in Council. The delegations in Bill C-33 are much more restrained than they are with either aviation or marine.

On balance, we are much more pleased with the rail safety regime than we are with either aviation or marine. We do have some amendments to propose, and comments on each.

We recommend that railway safety inspectors, enforcement officers, and screening officers be federal employees, with appropriate certifications and training. It is not explicit in the bill that these positions be government positions.

While there is a requirement that government inspectors be responsible for the oversight of federal-provincial agreements, there is no such clarification for the three positions specified in the bill. The bill seems to imply that the minister could delegate these powers to any individual. We would recommend that the statute specify that the people in these positions be government employees.

We should put these delegation and responsibility issues in context. Look what is happening in aviation and marine.

• (1640)

A recent B.C. Supreme Court decision has extended Transport Canada liability to the delegation of ministerial authority to a private contractor who was certifying the airworthiness of aircraft. Leaving aside the issue of the performance of that contractor, the contractor appeared to be in a clear conflict of interest, and people lost their lives because of it. We should never allow this to happen.

In the last year, on the basis of interventions by UCTE and others and a number of reports of the Transportation Safety Board, the Minister of Transport removed the ministerial delegations for the Canadian Business Aviation Association. Again, leaving aside the performance of the association, how could a trade association possibly be effective at the regulatory oversight and compliance of its own members?

We have a similar problem developing in marine, where there are proposals to delegate ministerial powers to organizations that are suppliers to the very companies they would be responsible to regulate. How could this possibly work in real life? We should never allow these same situations to arise with rail, even if that is not the government's intent at the time legislation is introduced and passed. When statutory delegations are not restrained, there is a tendency for regulators to broadly delegate in the interests of cost savings. We believe this is wrong and is not supported by the will of Parliament or the interests of the travelling public.

If Bill C-33 requires that the inspection positions be government employees, then this problem cannot exist.

We require a definition and standard for "highest level of safety", and make the system responsible to meet this standard.

We are very pleased that the bill makes reference to highest level of safety in proposed paragraph 47.1(1)(a). The reference is to risk management analysis and remedial actions only. Unfortunately, the term is not defined, nor does it apply across the board. We think it needs to, in the same manner and phrase as was proposed in the SCOTIC-amended Aeronautics Act that died on the order paper two elections ago. Simply make the whole railway safety system accountable to the "highest level of safety" and require that this be defined in the accompanying regulations.

We require third-party whistleblower protections.

The U.S. experience and whistleblower remedies are ones that we should all study. The United States aviation safety statute provides for an independent office for whistleblowers, both government inspectors and private sector employees. The fact is that even government inspectors are concerned about punitive actions that can be taken by government and private sector management, should those inspectors take a hard line against an operator. With today's fast-paced world, the pressures to operate quickly and on time are so great that many safety infractions can be overlooked for fear of the extra costs and reprisals associated with safety enforcement. We recommend that you put out the compliant process to a third party that is completely independent of commercial and political pressures.

Like the teamsters who appeared before you on February 10, we support the appeal to the SCOTIC provision that was inserted into the Aeronautics Act. We also support the explicit reference to the Canada Labour Code in the statute. We would also like to see these provisions added here.

In conclusion, like our brothers and sisters in other unions, we do not want this bill to die on the order paper and not be reintroduced. We need to give Transport Canada's rail safety program the tools this bill gives them to do their job better. We are not asking for significant and difficult changes to the bill. You could do these changes and still get this bill through the House and Senate quickly. We sincerely hope you will do this.

Thank you.

• (1645)

**The Chair:** Thank you very much. As you committed to, you were on time.

Mr. Piché, do you have some opening comments?

**Mr. Mike Piché (National Representative, United Steelworkers):** No, you can move.

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

Mr. Dhaliwal or Mr. McCallum?

I have Mr. McCallum.

**Hon. John McCallum:** I'd like to thank you very much for your presentations.

I will ask two questions. First, in terms of the safety level, you say we need a definition of "highest level of safety", but you don't really suggest what that definition should be. Do you have any suggestions on that subject?

**Mr. Michael Teeter (Advisor, Union of Canadian Transportation Employees):** We recommend that it be defined in regulation or in the statute.

You may recall, with regard to the Aeronautics Act, amendments that were before this House. It was added by the committee to specify highest level of safety—again, not defined, we just assumed that the government would define it in regulations.

**Hon. John McCallum:** Thank you.

**Mr. Michael Teeter:** If I could just comment again.

There are international organizations that do provide these kinds of definitions. In the case of air it's ICAO, and rail as well. It's not that hard to find. We just didn't feel it was appropriate to recommend it here.

**Hon. John McCallum:** In terms of whistleblower protection, you advocate greater protection. The teamsters were before us recently and they proposed a direct line from whistleblowers to Transport Canada. You seem to have a different mechanism in mind. Would you go along with the teamster proposal, or do you think something else is better?

**Ms. Christine Collins:** I think it is critical that we have good whistleblower protection. I believe an independent party one step removed from Transport Canada would be the best option. Then there is no confusion or politics at play.

It has been seen in the United States that, for whistleblowing, the way they have it actually works.

**The Chair:** Mr. Dhaliwal.

**Mr. Sukh Dhaliwal:** Thank you, Mr. Chair.

Madam Collins, on the question that Mr. McCallum asked with regard to whistleblowers, why would you not like to see Transport Canada manage that? I don't understand why you would want to give it to an outside agency to deal with whistleblowing situations.

**Mr. Michael Teeter:** You have to differentiate between people who work for the railway companies and people we represent who inspect for the government. Obviously, for the people who work for the railway companies, an appeal to Transport Canada represents, to them, a good way to deal with management that might be difficult.

In the case of the inspector, of course we can't very well appeal to the bosses at Transport Canada if we see things the inspector can't do anything about. We do have examples we can share with you.

**Mr. Sukh Dhaliwal:** If you are saying this, then you are raising a suspicion. You're telling me that the inspectors working for Transport Canada.... On the one hand, you are saying that those people who should be inspecting should be government or Transport Canada employees; but on the other hand, you're telling me that you have a question mark with respect to their integrity and credibility.

**Ms. Christine Collins:** No, I don't think one is linked to the other. I think it's clear that we strongly believe in support and that the responsibility for the inspection should remain with Transport Canada and within the inspectorate community.

When you're talking about whistleblowing and looking to get things fixed, the question is, would inspectors who work for Transport Canada or the Transportation Safety Board, if they were housed within Transport Canada, be going to their own management to complain about their own management? There are all kinds of questions on how there would be any kind of protection there.

One of the examples that could be used is the airport sector that has been delegated SMS responsibilities. There are a few very small airports that remain with Transport Canada and you have inspectors going in to inspect their own colleagues. Where do they do the whistleblowing or where do they report if they have a problem with

the airport manager who is also a Transport Canada employee? In the case of the few airports that are left, are they going to try to whistleblow or make a statement against somebody who is actually superior to them within their own organization? That's difficult.

Having a totally independent office makes a very strong statement to everybody, to the public and private sector, to those who want to use whistleblowing, and to the federal government employees who use whistleblowing. Having it as a completely separate entity altogether shows that we believe and will protect those who come forward to identify wrongdoing.

• (1650)

**Mr. Sukh Dhaliwal:** I come from a professional world, being an engineer and a land surveyor. We go out, and we do our own work. If the government subcontracts the work to an outside agency that does not have a conflict of interest, why would it make a difference whether those persons were employed by Transport Canada or by the outside agency, if those individuals have met the highest standards of the professional world?

**Mr. Michael Teeter:** Unfortunately, it is not always the case that Transport Canada delegates to people with no conflict of interest. It's a small world, and some of those people are in a clear conflict of interest. They might be delegated to inspect the very people who pay them for other services.

I appreciate the standards that professional engineering degrees and so on confer. But at the same time, why wouldn't we set up something appropriate in the first place that says that anybody who has been delegated the power of the minister, which is what this is, can't have a conflict of interest? What way would you propose? What is the best way to avoid conflict of interest? In the case of the inspectors, make sure that they all work for the federal public service. That's what we're saying.

**The Chair:** Thank you.

**Ms. Christine Collins:** I just want to add to that, if I may.

The other issue is the dollars and cents. If you're allowing a company to self-regulate or self-inspect, they're always looking at the bottom dollar and the cost. That's not an issue when you have federal government employees maintaining responsibility for inspection as well as for regulation and oversight.

**The Chair:** Thank you.

We'll go to Mr. Plamondon.

[Translation]

**Mr. Louis Plamondon:** Thank you, Mr. Chairman.

To begin, I will give you time to appreciate the great job our interpreters are doing.

I fully share your view that inspectors should be federal government employees. There must be a shared view about security matters and also there should be no room at all for conflicts of interest.

Earlier, Mr. Kelsey, from TransLink in Vancouver, as well as Ms. Fréchette, from the Agence métropolitaine de transport, and Mr. Percy, from the Greater Toronto Transit Authority, seemed to be saying that this bill is rather unnecessary. If I look at the situation in Montreal, which I know somewhat better, 90% of all routes belong to CN or CP. They are therefore under federal jurisdiction. These two railways have to comply with provincial security standards, with provincial regulations which ensure proper enforcement of security standards. Indeed, no serious or even minor accidents have been reported by the board.

These witnesses say that the bill is unnecessary because rules are already in place within their organizations and at the provincial level. This raises a quasi constitutional issue insofar as the bill creates an interference with provincial jurisdiction.

They tell us that if we impose regulations on them, they will have to tell CN and CP what to do. But CN and CP may not want to take orders from these organizations or have them interfere in their business. So these witnesses are saying that things are fine as they stand, that we should let them be, but that some other measures should be taken in the area of safety.

For example, your suggestions about whistleblowing and the requirement that inspectors be government employees seem very legitimate to me. But what do you think about the views of these three organizations that appeared earlier before us? I would like to hear the opinion of the two unions represented by Ms. Collins and Mr. Piché.

• (1655)

[English]

**Mr. Mike Piché:** The way I understand it from my colleague here is that the concern is not so much the inspection of the railways; it's the inspection of the inspectors. It is rather ironic that I'm going to inspect my own colleagues to report to my own colleagues. That's where the situation gets a little hazy. So what I believe you are looking for is an independent body when it comes to dealing with just that particular sector, not with the railway or CP or CN in general.

[Translation]

**Mr. Louis Plamondon:** When you say that you are going to inspect inspectors, this means that since the railways of CN and CP are under federal jurisdiction, other inspectors than yours will be doing the same job. You say you would inspect inspectors. Who are they?

[English]

**Mr. Mike Piché:** I'll let my colleague answer, because I'm with the steelworkers representing a different sector here.

**Ms. Christine Collins:** I think you had two different questions. One question was on the whistleblowers, and I think that was pretty self-explanatory, so unless you have another question, I'll go on. I guess the question dealt with federal jurisdiction versus people who appeared here before who came under provincial jurisdiction.

If they are using national rail lines, whether they are subcontracting from CP or subcontracting from CN, Transport Canada is the regulator and therefore there is a federal responsibility.

I did arrive early and I heard some of the presentations that were made about subcontracting and not having access to records. I think that's irrelevant and it's a red herring. The users are required to do their safety management system reports and they are required to provide that information to Transport Canada. If there was a conflict between somebody who was subcontracting from CN or CP and accessed the records of CN, their safety management system records of the main rail body, then that certainly could be addressed. The appropriate body to address it would be the Transport Canada rail section, in my opinion.

[Translation]

**Mr. Louis Plamondon:** When there is a contract between the Agence métropolitaine de transport of Montreal and CN and CP, the Montreal agency pays CN and CP for the use of their tracks. The role of the federal government, in its area of jurisdiction, is to ensure that these tracks are safe.

You do not seem to have a problem with this and the fact that no additional employees are being added by the Agence métropolitaine de transport de Montréal, even if the bill requires it. What is important in your view is that all federal tracks be inspected by one and the same agency, that the work be done by federal employees and that there be no sub-contracting. Is that correct?

The fact that this bill does not deal with the agencies in Toronto, Vancouver and Montreal, because they are already tied to the federal government by contract and because CP and CN's tracks are federal, is not a problem to your mind. In other words, you respect the views of the earlier witnesses.

• (1700)

[English]

**Ms. Christine Collins:** I'm not sure that you really want me to answer that question, as it wasn't part of my presentation of what I'm doing, but if you're asking me, I have a serious problem with what they were saying, a very serious problem.

If I were to simplify, and you used the example of a Montreal agency that is using CN and CP rail lines, and the portion of the line they're using is governed by the federal government, then Transport Canada—

**Mr. Louis Plamondon:** At 90%.

**The Chair:** I have to interrupt. We're way over time.

I'll go to Mr. Del Mastro, as we're really tight on time.

I'm sorry, it's Mr. Bevington, very quickly, for seven minutes.

**Mr. Dennis Bevington:** Very quickly? Seven minutes, I think that's standard fare, isn't it? Thank you, Mr. Chair.

I'm very interested in what you have to say about the relationship to this act that the previous group talked about, because of course I was trying to determine whether it would be sensible to have inspectors from different agencies engaged in the same railway. That seemed to be where they were suggesting it would go. Isn't that what this bill is trying to avoid?

**Ms. Christine Collins:** Maybe I missed what they were trying to say. I was sitting at the back. But we're very clearly saying that the inspection, the oversight, and the responsibility need to rest with Transport Canada and Rail Safety.

**Mr. Dennis Bevington:** What is the state of the rail inspectors in Canada? Over the past decade, has the number of employees gone up or down?

**Ms. Christine Collins:** I would say that the number of employees at Rail Safety has gone up slightly over the last number of years. I don't have the figures right here with me, but work has been done within Rail Safety looking at the various regions, etc., where the inspectors are, and the responsibility of the inspectors. I know that the department has put a lot of work into appropriate levels of staffing.

There is still some staffing going on, so I wouldn't say we're fully staffed and happy. Certainly the concerns we raised about where there were some holes have been addressed. They're working towards what we would consider a fair staffing level within Rail Safety.

**Mr. Dennis Bevington:** Has the development of SMS on the rail system changed the level of inspectors at this time?

**Ms. Christine Collins:** No, and we don't expect it will. As I tried to indicate in my report, we use the rail safety model in the way that rail has gone forward in SMS as the example that should be used in all modes. Aviation and marine could take a chapter out of the book of rail as they try to address SMS.

**Mr. Dennis Bevington:** Okay.

Mr. Piché, we looked at the brief you gave us ahead of time, and I thank you for that. Many of the issues you seem to be speaking to deal with the regulations that would be in place. Do you agree with the presentation from the previous union group that regulations should be brought forward through Parliament for review by parliamentarians?

• (1705)

**Mr. Mike Piché:** In the group I currently work with, we're inspected by HRSDC, not Transport Canada. That causes an issue for us. We would prefer to have Transport Canada as our inspector, because the time it takes to get an officer to a site is much quicker than when we're dealing with HRSDC.

**Mr. Dennis Bevington:** But many of your concerns deal with the regulations that are going to be put in place, and they are certainly not within this bill. They will come after.

**Mr. Mike Piché:** That's right.

**Mr. Dennis Bevington:** Would you suggest, as we've heard from other union groups, that those regulations come through the committee?

**Mr. Mike Piché:** I agree.

**Mr. Michael Teeter:** If I recall, Teamsters was asking for the ability to appeal to SCOTIC if you had issues—the same as the Aeronautics Act amendment. No one specified what that would mean. In other words, all regulations wouldn't come here, for example. I don't think that's what people are saying. I think we're just saying put the appeal in there and let people use it for what they want to use it for.

Frankly, if we had parliamentary oversight of all regulations, the system could really get bogged down and be difficult to administer.

**Mr. Dennis Bevington:** I understand that, but I'd like to get the perspective on this issue, because that was considered to be important by the Teamsters.

**Mr. Michael Teeter:** We support it. It's in Christine's comments that we support it.

**The Chair:** You have 30 seconds.

**Mr. Dennis Bevington:** I'll move on, then. Go ahead.

**The Chair:** Thank you.

Mr. Del Mastro is next, for seven minutes.

**Mr. Dean Del Mastro (Peterborough, CPC):** Thank you very much, Mr. Chairman, and thank you to the witnesses.

At the outset, I want to thank you for your support for the bill, for the recommendations you've made, and for your support, obviously, for a very safe, effective, and efficient Canadian railway sector. I think Canadians well understand the importance, and this government certainly understands the importance, of the railway sector to our long-term economic opportunity and health. I think making sure that it operates as safely as it possibly can is obviously critically important.

Ms. Collins, you made a remark about an amendment you would like to see with respect to the highest level of safety and what that might mean. The government is in fact moving an amendment on that. We support you on that. We're bringing an amendment that defines what we mean by highest level of safety by indicating that it means the lowest acceptable level of risk, as demonstrated by a risk management analysis.

Does that satisfy your concerns?

**Ms. Christine Collins:** Could you just repeat the last part again, please?

**Mr. Dean Del Mastro:** Sure, I'd be happy to.

It defines highest level of safety as the lowest acceptable level of risk as demonstrated by a risk management analysis. So we're going to the lowest possible level of risk we can have.

**Ms. Christine Collins:** That sounds very good. It certainly defines lowest level of risk, which is exactly what I would like to see. Thank you. I appreciate that.

**Mr. Dean Del Mastro:** Okay, that's wonderful.

You raised concerns about the inspection of the inspectors. I think that is what you said. Your concerns are kind of related to the inspection of the inspectors when it comes to who's actually inspecting the railways.

One of the things I think is very important to note with respect to derailments specifically is that they're hugely expensive. They're not just expensive in terms of what it costs to clean them up. They're hugely expensive in terms of goodwill, as well. And the railways really need positive stakeholder relations with communities, municipalities, provincial governments, federal governments, and shippers, frankly, to really achieve their potential.

To what extent do you think that will work with this regulation? It certainly seems that CP and CN are supportive of this bill. Do you think it works well in collaboration with everything else that's in the bill and that it will lead to overall safer railway operations in Canada?

• (1710)

**Ms. Christine Collins:** Yes, I certainly do.

That's the second reference to the inspectors inspecting the inspectors. Perhaps it was the choice of words I used. I guess the reference I was trying to make was about the inspectors going in and inspecting their co-workers. How do you whistleblow on a co-worker? It was in reference to having an independent, separate....

**Mr. Michael Teeter:** On the issue of the rail lines reaching out and being more responsive to communities and so on, I think it should happen. It's happening now. The principle of SMS is certainly designed to achieve that in all modes. We've always said that as long as there's sufficient oversight, and as long as the regulatory framework is clear and is enforced by Transport Canada inspectors, SMS is a good thing. Where it's a bad thing is when SMS becomes a replacement for inspection, a replacement for oversight. Unfortunately, in some cases that does occur.

**Mr. Dean Del Mastro:** We heard from a couple of groups earlier, principally the urban transit authorities, about perhaps some additional costs they might have, although they couldn't actually quantify them, for doing essentially what they're already doing, which is ensuring the highest level of safety. That's how it sounded to me. It seemed to me that when they're operating on the federal railways, where the federal government actually very clearly has jurisdiction, the federal government should want to ensure.... As far as I'm concerned, everything's great until there's an incident, and then somebody is left holding the bag. To me it would seem almost irresponsible of the federal government not to include those operations under this act.

Would you agree with that?

**Ms. Christine Collins:** I agree with that, probably 500%, because when they're using the federal lines they need to ensure their equipment or things like their wheels, etc., meet the highest standards. Therefore, I totally disagreed with their perspective. I believe Transport Canada rail safety has the tools in order to be responsible and it should be the entity that is responsible.

**Mr. Dean Del Mastro:** I agree. It just seemed to me that when they were talking about how they work directly with Transport Canada every day and there are already some inspections taking place, one thing that kind of concerned me was a comment that said they have no access to any of the information that tells them any of the operational information on their tracks. That could be interpreted that they don't know if the tracks are safe or not, right? Isn't that another way of saying the same thing?

I assume that they are. Obviously the class ones are regulated federally, but I would think they'd want to know that.

**Ms. Christine Collins:** If they didn't know that the tracks were safe, one would think they wouldn't put the train on the track.

**Mr. Dean Del Mastro:** One would think.

Thank you so very much for your testimony today.

**The Chair:** Thank you.

With that, I will thank our guests for being here today. I appreciate your patience with us. We look forward to a final outcome that meets all requirements. So thank you very much.

We're going to take a minute's recess while our guests excuse themselves from the table. We have some pretty serious committee business to deal with, so I would ask that members be ready to go in one minute.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1715)

**The Chair:** Welcome back.

Mr. Jean.

**Mr. Brian Jean:** There are two matters of business I need to advise the committee on, and one is in relation to the ministers' attendance on the tenth.

I'll just wait for Mr. McCallum, because it obviously is very important.

Mr. McCallum, I was just saying I have two things in particular. One is that both ministers are not available for estimates on the tenth, but they are available on the eighth, two days earlier. I thought that would be fine, but I wanted to make sure it was okay with all the committee members. That is two days earlier, and both ministers will be here.

**The Chair:** I'll ask the committee. Are you comfortable with that? That will be to do estimates on the eighth with the minister and officials. Okay?

**Some hon. members** Agreed.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** The other matter, Mr. Chair, is that we had a vote last night in relation to Bill C-511 and I drafted a motion that I would like to move now, Mr. Chair. I do think we might have some agreement in relation to this particular motion. According to the rules I'm able to do that now.

Mr. Chair, I would move that in accordance with the order of the House that the Standing Committee on Transport, Infrastructure and Communities conclude the study of Bill C-511, an act respecting the reporting of motor vehicle information and to amend the Motor Vehicle Safety Act (improving public safety) by March 3, 2011, this committee immediately begin study of the bill on Tuesday, March 1, at 11 a.m. and that the committee report the bill to the House on Wednesday, March 3, 2011.

Now, Mr. Chair—

**The Chair:** Well, as I said earlier, we have guests who are invited to that 11 a.m. meeting, and they're flying in from Europe.

**Mr. Brian Jean:** Mr. Chair, I understand that. The motion I proposed was 3:30 p.m.; Mr. McCallum wanted the 11 a.m.

**The Chair:** I can't do it.

**Mr. Brian Jean:** No, I understand, Mr. Chair.

Mr. McCallum.

**The Chair:** If you want to amend it to 3:30, the regular time, I can make those changes, but I cannot change the 11 a.m. We have guests coming in from Europe to talk about the issues of air safety, which is what that special meeting was designated for.

• (1720)

**Hon. John McCallum:** My motive on the time was because Joe Volpe is chairing a committee at that time. But I guess we have no choice; we'll put it at 3:30 p.m.

**Mr. Brian Jean:** As I advised, Mr. Chair, I'm more than happy to meet with Mr. Volpe and Mr. McCallum, or any other members, on the Monday or Tuesday before the meeting to try to resolve some of the issues we have. I think for the most part we'll be able to come to a compromise regarding most of the amendments on Bill C-511.

I'd invite the NDP and Bloc to that as well, if they'd like to talk about specific amendments.

I would move that motion, Mr. Chair, and I do have a copy of it here.

**The Chair:** Do we have it in French and English?

**Mr. Brian Jean:** We have it in both French and English.

I understand that my friend Mr. McCallum has an amendment to it. I have no difficulty with that friendly amendment he's proposed.

I would also make note that because of the nature of the motion originally, and now in the spirit of cooperation that's taken hold of all of us, the motion I've given everyone should be changed from Wednesday, March 2, to Thursday, March 3.

I would ask that Mr. McCallum make that amendment as well.

**The Chair:** I'm wondering if I could get a copy of that motion.

**Mr. Brian Jean:** As I said, Mr. Chair, I'm not asking for the motion to be voted on with the Wednesday, March 2 date because it does not need to be reported back to the House until Thursday, March 3. The proper date should be reflected, just to give us ample time to study Bill C-511.

**The Chair:** There's a motion before us.

I understand, Mr. McCallum, you have an amendment to this motion.

**Hon. John McCallum:** Yes, Mr. Chair. Is there any chance that the visitors we have for 11 o'clock on that day could instead come at 3:30?

**The Chair:** At this point I would say no, based on the conversations I've had with them. They're flying in for about a two-and-a-half-day meeting and then out again. I could check, but my understanding is that they are coming in for Monday, Tuesday, and then out on Tuesday evening or Wednesday morning.

**Mr. Brian Jean:** Mr. Chair, I'm fully happy to have it reflect both times, and to have you check with the individuals as to what time would be best for them and have you make that decision.

Certainly, as I said, I'm prepared to meet with Mr. Volpe beforehand and conclude any arrangements that we can.

**The Chair:** If we're going to do that, we'd have to modify the motion.

**Mr. Brian Jean:** Well, the friendly amendment of Mr. McCallum—

**Hon. John McCallum:** I have an amendment anyway, I think.

Shall I propose my amendment?

**The Chair:** Please.

**Hon. John McCallum:** Starting at the second to last line, it would be:

this committee immediately begin study of the bill on Tuesday, March 1, at either 11 a.m. or 3:30 p.m.

**Mr. Brian Jean:** And add "at the discretion of the chair".

**Hon. John McCallum:** Yes, "or 3:30 p.m., at the discretion of the chair".

We would cross out "and do not adjourn until clause-by-clause is concluded", and say:

at the discretion of the chair, and that the committee report the bill to the House on Thursday, March 3, 2011.

**The Chair:** For everybody who is reading along, line 3 would say:

this committee immediately begin study of the bill on Tuesday, March 1, 2011, at either 11 a.m. or 3:30 p.m., and that the committee report the bill to the House on Thursday, March 3, 2011.

**Hon. John McCallum:** I said "at the discretion of the chair". You can drop that if you wish.

• (1725)

**The Chair:** No, I'm sorry. It says:

at the discretion of the chair, and that the committee report the bill to the House on Thursday, March 3, 2011.

I'm suggesting that your amendment should recommend the date of Thursday, March 3.

**Hon. John McCallum:** Yes.

**The Chair:** Mr. Jean, you're okay with that?

**Mr. Brian Jean:** I am, sir.

That said, it sounded like your discretion was in relation to the reporting, not necessarily the date and time. I want to make sure that the commas and punctuation are in the right place.

**The Chair:** Right; the discretion is that if I can switch the meetings, I'll do that.

**Hon. John McCallum:** The discretion is whether we meet at 11 or 3:30, not whether we report.

**The Chair:** Right. Absolutely.

Maybe I'll ask Chad to read it out...

**Some hon. members:** No.

**The Chair:** Everybody's clear on it?

**Mr. Roger Gaudet:** *Oui*.

**The Chair:** Okay.

I'm sensing that the amendment is acceptable, but we do need to vote on it.

(Amendment agreed to)

(Motion as amended agreed to) [See *Minutes of Proceedings*]

**The Chair:** That takes care of one order of business.

We do have some committee business with regard to motions.

I will advise the committee that because of the timeframe, any amendments to Bill C-511 that anyone is interested in proposing, either as an individual or as a political party, must be submitted to the clerk of the committee 48 hours prior to the clause-by-clause consideration. I'm suggesting that day would be the Thursday before, to give our staff two working days to deal with the amendments.

Is everybody comfortable with that?

I actually need a motion on that, just to have it on the record. Can I have a mover on that?

**Mr. Dean Del Mastro:** I so move.

(Motion agreed to)

**The Chair:** I thank you for that.

We do have some motions that are before us—

**Hon. John McCallum:** Mr. Chair, I'm not going to present them.

**The Chair:** Okay.

Then I will go to Mr. Byrne, very briefly.

**Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.):** Thank you, Mr. Chair.

This is with regard to some business arising out of the meeting on February 15. I had stated an interest in a study or a review of the statutory and operational framework of Marine Atlantic Incorporated, which is a federal crown corporation. At the time, the parliamentary secretary volunteered that requests for either information or documents made by any member of the committee, including me, regarding the issue would be welcomed and would be handled by the minister and the department and the crown corporation with urgent priority.

The parliamentary secretary seemed to suggest that the department would be so anxious to fulfill the request for a number of reasons, but in particular that by so fulfilling the request my concerns and curiosities would be satisfied that the corporation was being well managed, and there was no need for any further study.

So what I'd like to do, because I raised this issue at committee, is let my fellow committee members know the following.

Brian, I'll be presenting you with a letter that I'd like you to convey to the minister's department and to Marine Atlantic Incorporated. It's a fairly extensive list of information that I'm requesting, but it should be fairly easy to compile.

Rather than communicate that information to the committee at large, I had discussions with members of the Bloc Québécois, and because of the translation requirements, I think it would be agreed and fair that if you just conveyed that information to me, it would be a private communication between the minister's office and me. I would be prepared to share that information with any member who so desired.

If I can get that information quickly, then I won't be presenting a motion before the committee to pursue the issue of Marine Atlantic further. If I can't get that information quickly, then I will indeed pursue the matter with a formal motion.

**The Chair:** Okay?

Yes, Mr. Jean.

**Mr. Brian Jean:** Mr. Chair, I'm more than happy to do that. I just....

No disrespect, Mr. Byrne, but I don't feel comfortable in relation to the translation and giving it to one member of the committee. I had made an arrangement with Mr. Laframboise some time ago, and I keep my word. I know he's not here any more, but I told him that I would never do that, and I keep my word.

I would ask that instead you just send the letter to the minister's office and they will take care of it directly. It's just that if it comes through me, I would feel obliged to follow my promise to Mr. Laframboise, and I can't break that promise. I promised that the French and English issue would never be an issue for our committee, and I have to keep that.

• (1730)

**Hon. Gerry Byrne:** Fair enough.

I've had discussions with the critic for the Bloc Québécois. The arrangement that I am following, instead of going through the committee, was acceptable to him.

With that said—

**Mr. Brian Jean:** You will get the same attention, I promise. If you send me a copy of the letter, and it's not through the committee, I'll get it to the minister and I'll get that information. I'll keep on them and you can ask me any time you want. I'll make sure that information is forthcoming as soon as possible in English. But it will be to the minister instead of to the committee. Okay?

**The Chair:** Monsieur Plamondon.

[*Translation*]

**Mr. Louis Plamondon:** Just to let you know that Mr. Laframboise is no longer responsible for this committee, it is now Mr. Guimond.

[*English*]

**The Chair:** Yes.

**Mr. Brian Jean:** I understand since—

**The Chair:** The previous agreement was that we wouldn't transfer any documents without them being officially translated. I think if you're going to do that letter.... I understand what you're doing. If you do that, then we're good?

Monsieur Gaudet.

I'm very limited for time.

Mr. McCallum, a final comment?

**Hon. John McCallum:** I just wanted to give notice that at the next meeting I'm likely to bring a motion that we spend one meeting to look into a labour dispute involving limousine drivers to Pearson airport, who I'm told operate in what might be described as feudal conditions.

**Mr. Brian Jean:** Mr. Chair, I thought that was the responsibility of the airport authority and there was no federal government jurisdiction in relation to that. So I'm wondering whether—

**The Chair:** I don't think we can have any discussion until we see the motion, if it's there.

I just want to advise committee members that when we return on March 1, the first and the second meeting will be aviation safety and Bill C-511, and then we will continue on Thursday with Bill C-33.

The meeting is adjourned.

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