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Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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• (1535)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call the meeting to order.

I'd like to welcome our witnesses here today: Mr. Laplante, Mr. Ferguson, and Mr. Chouinard.

With no further ado, I'll turn it over to you.

Mr. Michael Ferguson (Auditor General of Canada, Office of the Auditor General of Canada): Thank you.

Mr. Chair, thank you for this opportunity to discuss chapter 7 of our 2013 fall report on the oversight of rail safety.

Joining me at the table are Maurice Laplante, assistant auditor general, and Régent Chouinard, principal, who were responsible for the audit.

The primary responsibility for the safety of day-to-day rail operations rests with federal railways. Transport Canada is responsible for the regulatory framework required for rail safety in Canada. It is also responsible for overseeing whether federal railways have complied with that framework, and for taking enforcement action when necessary.

[Translation]

We examined whether the department has adequately overseen the management of rail safety risks by federal railways. We focused on Transport Canada's regulatory framework, oversight activities, human resources and quality assurance program. We did not examine the safety of Canada's rail industry or the safety of the railways' operations. Our audit was not an investigation into the tragic accident at Lac-Mégantic, Quebec, or any other rail accidents.

[English]

Transport Canada has implemented a regulatory framework for rail transportation that includes a safety management system approach for identifying, analyzing, and responding to rail safety risks. It has made progress in working with federal railways to implement such systems. For example, it published guidance on safety management systems in 2010 and 2012. It has also made progress in addressing many recommendations from the 2007 Railway Safety Act review and those of the Standing Committee on Transport, Infrastructure and Communities.

However, despite discussions with the industry and progress over the past 20 years, a number of long-standing and important safety issues remain, including trespassing, grade crossings, and the

implementation and oversight of safety management systems. It's taking too long to resolve them.

[Translation]

We found that Transport Canada has conducted many inspections and some audits to identify non-compliance with rail safety regulations, rules and engineering standards. However, the department is missing key performance and risk data to target higher-risk railways and the most significant safety risks.

Fourteen years ago, Transport Canada recognized the need to shift from an inspection-based oversight approach to one that integrates the oversight of safety management systems. This shift is still ongoing, much work remains to be done, and the transition is taking too long.

[English]

Transport Canada has done only 26% of its planned audits of federal railways over a three-year period, and the audits it did complete were too narrowly focused. At that rate, it will take many years to audit all the key components of safety management system regulations, including the key safety systems of each of the 31 federal railways.

[Translation]

We concluded that Transport Canada needs to address the significant weaknesses we found in each aspect of the department's oversight of the safety management systems implemented by federal railway companies. Otherwise, it may not have the assurance it needs that they are effectively managing safety risks on a day-to-day basis.

• (1540)

[English]

Mr. Chair, we're pleased to report that Transport Canada agreed with our recommendations. The department expressed its commitment to implement all of them by early 2016. Transport Canada shared its action plan with us late last week, but we have not had the opportunity to review it yet.

Transport Canada needs to have robust reporting on its actions and be accountable for progress made against the plan. Your committee may wish to explore the progress made since we completed our audit work, including on the adequacy of Transport Canada's action plan and timelines to address the issues raised in this chapter.

[Translation]

Mr. Chair, that concludes my opening remarks. We would be pleased to answer any questions the committee may have. Thank you.

[English]

The Chair: Thank you very much, Mr. Ferguson.

I'll now turn it over to Mr. Mai for seven minutes.

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chairman.

Thank you, Mr. Ferguson, and also the members of the

[Translation]

Office of the Auditor General of Canada.

You mentioned that just 26% of planned audits had been done. That means 74% were not done. What repercussions does that situation have? What happens if railways' activities are not audited?

[English]

Mr. Michael Ferguson: The department identified their need to audit each of the 31 federal railway companies over a three-year time period. What we identified was that in that time period they were able to do only 26%, and even of the 26% of audits they completed, we found there were weaknesses in how the audits were completed.

Their plan—and I think that's the important point, that it's their plan, that it's what they have said they need to do to have adequate assurance that the safety management systems of the railway companies are in place—is to be able to do the audits of all 31 of those companies over a three-year time period. They haven't been able to do that, so the end result is that they can't have enough information to make sure the safety management systems are in place as they're supposed to be.

Mr. Hoang Mai: Could you tell us how many inspectors would be needed to get all the audits and inspections done effectively and on time?

Mr. Michael Ferguson: They said they needed 20 inspectors and we've identified that they have 10. But they haven't actually done a complete analysis based on their audit methodology. They need to define their audit methodology better before they can actually know how many inspectors they will need.

Again, we identify in here that they said they need 20 but only have 10. But they need to do that analysis.

[Translation]

Mr. Hoang Mai: In 2011, the Office of the Auditor General of Canada reported that "Transport Canada lacks a consistent approach to planning and implementing compliance activities." I believe you're pointing to the same problem today.

[English]

Mr. Michael Ferguson: I'll ask Monsieur Chouinard to respond.

[Translation]

Mr. Régent Chouinard (Principal, Office of the Auditor General of Canada): I would just need a clarification. I believe you are referring to a chapter in the 2011 report on safety. Was it the chapter on aviation safety or the one on the transportation of dangerous products?

Mr. Hoang Mai: It was in chapter 1, on the transportation of dangerous products.

Mr. Régent Chouinard: That's a separate sector at Transport Canada. Today, we are presenting our report on the sector responsible for railway safety. Therefore, we cannot answer that question.

Mr. Hoang Mai: Turning back to the safety management systems, I would like to know this. If there aren't enough inspectors to check the systems in place and ensure everything is satisfactory, how can we sanction the offending railway companies? Is it possible to do that?

[English]

Mr. Michael Ferguson: In terms of putting in place sanctions, that's really a question the department would have to respond to, on how they can manage that.

Again, though, what we identified was that they have about 110 inspectors in total, and only 10 of those inspectors are at the level they need to be at in order to conduct audits rather than inspections. How many actual auditors they need, I don't know. It's a whole issue about their human resource management.

They have a certain number of people, and those people are trained to do inspections. They need a certain number of people who can do audits. There's a distinct difference between inspections and audits. Again, they need those trained people to be able to conduct audits so they can get the assurance they need, and then follow up with the rail companies to make sure they're putting in place the improvements they need to do.

● (1545)

[Translation]

Mr. Hoang Mai: You also mentioned problems as far as inspector training was concerned. Could you please elaborate on that?

[English]

Mr. Michael Ferguson: I'll start, and Mr. Chouinard will follow up.

Essentially, we identified the need to train the inspectors to move into the new process of auditing the safety management systems, and we found that not all of the inspectors and not all of the managers had received that training.

I'll ask Mr. Chouinard for more detail.

Mr. Régent Chouinard: Transport Canada identified that, to be able to do audits, they would have to go through risk management and SMS training. We found some gaps in the training of managers, and also in the training of inspectors, some of whom lacked the ability to do audits in addition to inspections. At the time we reported, about 40% of inspectors needed to take the training necessary to conduct audits.

[Translation]

Mr. Hoang Mai: Did you check whether the Transportation Safety Board of Canada had looked into that?

[English]

Mr. Michael Ferguson: That's not something we dealt with in the audit.

Mr. Régent Chouinard: We did not audit the Transportation Safety Board as such, but as part of our audit we looked at how Transport Canada responded to the recommendations. The Transportation Safety Board reported publicly how they feel Transport Canada responded to the previous recommendations. We reported that 90% of the recommendations had been fully addressed by Transport Canada—that was an assessment made by the TSB. But that left 10% of the recommendations that had not been fully addressed, according to the TSB. That's what we reported.

[Translation]

Mr. Hoang Mai: Would you kindly give me a quick answer, as I don't think I have much time left.

[English]

The Chair: Sorry, you are out of time. We may get back to you.

We now move to Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Mr. Chair, just before starting the clock, can I raise a quick point of order?

Given that we're all here with the Auditor General and his team, would it be possible to extend this meeting for a full two hours? I was under the impression, even from our calendar grid that was distributed during our last working meeting, that this was going to be a two-hour meeting. I'm just wondering whether the witnesses would be able to stay for the full two hours today. We have the meeting room, we have the interpretation, we have the members. Just as a point of order, I wonder if we could do that.

The Chair: First of all, that would be up to the committee as a whole, and my understanding was that the AG and staff agreed to be here for an hour.

Mr. David McGuinty: Can we ask the witnesses whether they're prepared to stay a little longer, and then canvass the committee very quickly? I think we would all benefit from the richness of the testimony. I'm sure all members from all sides have a lot of questions for the Auditor General.

The Chair: Is there unanimous consent to extend the meeting?

Some hon. members: Agreed.

The Chair: Mr. Ferguson and your staff, do you—?

Mr. Michael Ferguson: We're here at the pleasure of the committee.

The Chair: Okay.

Mr. David McGuinty: Thank you very much, sir, appreciate it.

I guess we can start the clock now.

Thank you, Chair, and my thanks to the witnesses for being here.

There's just so much to talk to you about, Mr. Ferguson. It's hard to begin. Most of your chapter will be shocking for a lot of Canadians, when they read about the state of rail safety in the country. But one of the things that really stuck out was the question of the number of audits that have been completed.

I think you reported that 26% of the audits that were contemplated over a three-year fiscal period were actually completed. Is that in your chapter?

• (1550)

Mr. Michael Ferguson: Yes, over a three-year period, we found that they had completed 26% of the audits planned.

Mr. David McGuinty: On that very front, in a previous meeting, I asked the assistant deputy minister of the department about that number.

I want to read it to you, for your consideration, and I'd like to have your response. I asked the following question to Mr. Gerard McDonald, the ADM responsible:

Why would you have set out to achieve so many more audits and do 25% of what you set out? If you set out to do way more than that, did you not do it based on evidence, based on technical projections, based on need, based on safety?

The answer from Mr. McDonald was,

Yes, and based on our estimation of the risk in the system and what was required to give us a degree of confidence on the safety—

I responded with “Absolutely.” He then said,

—we felt at the time that the original number of audits that had been planned for was probably in excess of what was needed.

I was struck by this. I responded by saying,

It's in excess of what's required for safety for Canadians and safety in the system. Is that what you're saying now?

Mr. McDonald replied,

What we're saying is we adjusted our level of audit based on what we felt was necessary on our part to ensure safety in the system.

I can't square this, nor can Canadians. On the one hand, your team has looked at their projections for audits over three years. I assume you must have concluded that the projection of the number of audits required was perfectly reasonable. Then the senior-most official from the department comes to the committee and says, “Well, in fact, the numbers we contemplated doing over three years are wrong.”

Therefore, as the Auditor General, your number, 26%, is wrong as well, because he is now saying, as a matter of testimony, that was the wrong number targeted.

Do you follow my question here? Can you help us to understand how that can be?

Mr. Michael Ferguson: What we identified was that in their plan they wanted to do an audit of each of the 31 federal railway companies over a three-year-period. Over that period, they were only able to do 26%. We didn't assess whether their plan was reasonable or not. We assessed what they did against what they had planned to do, Transport Canada being the organization that had to determine how much evidence it needed.

If they had made a decision to change how many audits they needed to do, we would have expected to find an analysis that said they don't need to do as many as originally thought. Then we wouldn't have made this conclusion. The reason we came to this conclusion was that they said they needed to do an audit of each of the 31 railway companies over a three-year-period. We looked to see how many were done, and they had done 26%. We certainly didn't have any evidence that they had changed that plan.

Mr. David McGuinty: You solved the mystery for us.

All members are asking how it can be that a departmental official can come in and simply say, "We had the wrong estimation". And your answer is, "Well, if that's the case, show us the analysis. Show us how you came to the conclusion that you set out with the wrong number in the first place, over the three years that were contemplated."

There is no analysis, that you could find, that substantiated his claim that the department reduced the numbers because it had done so based on evidence, based on public safety. This is his testimony, not mine. Therefore, you could not find any substantiation that would backstop Mr. McDonald's testimony that they made a rational decision to reduce the number of audits based on evidence.

Mr. Michael Ferguson: Again, when we did the audit, we looked to see how many audits they planned to do and how many audits they did do. And remember that in our process of preparing an audit report, we share what we find back and forth with the departments. If they had an analysis that indicated they needed to do fewer, they had many opportunities to show that to us, and then we wouldn't have put the finding in the way it is there.

The reason why the finding is the way it is, is that's where the evidence led us. That's what they had planned to do and that's what they had done.

• (1555)

Mr. David McGuinty: Mr. Ferguson, can I ask you about capacity?

On rail safety now in the country, we're spending about \$32 million a year. I know that's probably not a number that you're following closely. We've cut safety investments in marine safety, road safety, and airline safety quite significantly in the last three years.

It's been about steady on rail safety, but we're spending \$32 million a year, which is \$8 million less than the \$40 million the government is spending on economic action plan advertising. That's another issue. I'll be coming to see you about that with my private member's bill to get that under control.

But I want to get a sense of the capacity conclusions you might have drawn here, because I can't square something else. We see a

massive increase in the transportation of oil on rail, and no sign of this decelerating with the contemplated doubling of the exploitation of the oil sands and fixed capacity in pipelines, yet we're told by senior officials that they have all the capacity they need and all the inspectors they need. Nothing has changed. All has remained constant.

I'm trying to understand how that's possible. Can you help Canadians understand? Is there is a capacity problem when it comes to inspections and auditing on rail safety in Canada?

Mr. Michael Ferguson: Mr. Chair, we didn't conclude on whether there was a capacity problem as such. What we concluded was that Transport Canada hadn't done that analysis to determine how many inspectors they need, how many auditors they need, and how much training they need to get their people in place.

I can't say whether they have enough resources, enough dollars, and enough people. What I can say is that they haven't done the analysis themselves to know how many resources they need to complete the work.

Mr. David McGuinty: Thank you.

The Chair: Thank you.

We'll now move to Mr. Watson for seven minutes.

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

Mr. Ferguson, thanks to you and your team for being here today.

Let me start by first thanking you for the important work you've done with chapter 7 of your report, and the recommendations as well. Transport Canada, as we've heard already today, has accepted all of the recommendations and has done so with some pretty specific timelines.

I didn't see it in the report explicitly, but I sense that if we were to read between the lines, not only did Canadians expect better from Transport Canada, I suspect you did as well, and I know the government expected better too.

For this committee, I'm not going to presuppose the recommendations that will come, because our study isn't complete right now. We've just begun to look at the implementation of SMS in all modes and the transportation of dangerous goods regime, but I sense already that there's a very strong appetite that this committee will want to recommend that it become an ongoing tool of accountability for Transport Canada in its public commitments and timelines, through to their completion.

Moving to the report, audit work obviously is about precision, so I will try to precisely understand what your audit is and what it is not.

Obviously you're aware of the tragic rail accident at Lac-Mégantic this past summer. Your report is not an investigation into the causal factors of Lac-Mégantic or, for that matter, any individual accident or several accidents. Is that correct?

Mr. Michael Ferguson: That's correct.

Mr. Jeff Watson: Accident investigation, of course, is the role of the Transportation Safety Board.

Your report makes no causal link between the Lac-Mégantic accident and the comprehensiveness of the regulatory framework for rail safety or, for that matter, any rail accident. Is that correct?

Mr. Michael Ferguson: That's correct. Certainly, again, we don't investigate accidents. It's not possible for us to draw a direct cause and effect.

Mr. Jeff Watson: Your report makes no causal link between the Lac-Mégantic accident and the safety management system of the MMA railway company. Is that correct?

Mr. Michael Ferguson: Again, that's correct. That wasn't the goal of the audit.

Mr. Jeff Watson: Your report in fact did not audit any safety management system for any rail company. Is that correct?

• (1600)

Mr. Michael Ferguson: That's correct. What the audit looked at was how Transport Canada assures itself whether the safety management systems of the companies are operating as they should be.

Mr. Jeff Watson: Your report makes no causal link between the Lac-Mégantic accident and Transport Canada's regulatory oversight. Is that correct?

Mr. Michael Ferguson: That's correct.

Mr. Jeff Watson: So anyone who states that your report concludes that Lac-Mégantic was preventable draws a conclusion you didn't make in your report. Is that correct?

Mr. Michael Ferguson: The audit was not an audit of the Lac-Mégantic accident, and we do not have any cause and effect in the audit between what we found and any accident that has occurred.

Mr. Jeff Watson: Thank you.

I want to move on now to questions related to the audit you conducted, which we read about in chapter 7. You completed the audit on June 28, 2013. When did Transport Canada first learn of your intent to conduct this audit?

Mr. Michael Ferguson: We completed our field work in June. So it was probably about a year before that, probably the previous June, I would think.

Mr. Jeff Watson: So you commenced your audit, then, in June 2012. That's what I understand you said.

Mr. Michael Ferguson: That would be about right. If you need precision, I would have to go back to find out for sure, but that would be about right.

Mr. Jeff Watson: Department responses are incorporated into the final report. When did Transport Canada receive a draft report to comment on?

Mr. Michael Ferguson: It would have been June 14, 2013.

Mr. Jeff Watson: Thank you, sir.

I want to move to Mr. Bourdon's testimony before this committee. On November 26, I asked Mr. Bourdon how many audits of safety management systems Transport Canada conducted every year. Mr. Bourdon in response said that he didn't have the precise number in front of him, but he said that it was between eight and twelve audits a year. Can your report confirm, at least for the audit period, that

somewhere between nine and twelve audits were conducted per year?

Mr. Régent Chouinard: What we have in our report is that Transport Canada, for the three years ending in March 2012, had conducted fourteen. In the two years ending March 2012, eight audits were done in those two years.

Mr. Jeff Watson: Very good. I further asked how many federal railways had been audited for safety management systems. This testimony was given the day before your report was released. The answer was, "pretty much all of them, several times."

Does your report substantiate that testimony?

Mr. Régent Chouinard: Mr. Chair, our report focused on two years. The report shows that in the two years we looked at for audits, there were eight of them, and in the three years ending in March, 26% of the railways were covered. If my numbers are right, that would be 8 railways out of the 31 in total were covered in the three years ending March 31, 2012.

Mr. Jeff Watson: I further asked departmental officials whether these were full-blown, system-wide audits or whether they were less than that. Let me see if I have the response. I think they confirmed that they were.... I don't have the testimony here. Let me just make sure I have this properly; I don't want to misquote this. I said, "Moving to system audits, [which would be] the next phase on top of traditional inspection...." Were these full-blown audits that looked at all of the 12 safety components? Or were they only focused audits on specific aspects of the safety management system?

• (1605)

The Chair: Your time is over, so we'll let the witnesses answer that question and come back, Mr. Watson.

Mr. Jeff Watson: I didn't get the question out, but....

Mr. Michael Ferguson: I'm not exactly sure of the question, but the audits that we saw were audits of specific, known issues rather than audits of the overall safety management system of the federal railways. And we also found that the scope of the audits was limited. So we had concerns about how the audits were conducted.

The Chair: With that, I understand you're going to take the next seven minutes, Mr. Watson, so it's back to you and you can continue your questioning.

Mr. Jeff Watson: Thank you, Mr. Chair.

I want to move to the "Stronger Ties" report. You referenced it in your report when speaking about recommendations that were made. Page 73 of that report talks about an evaluation tool for safety culture. They use an ICAO scale for the rail companies that moves from one being an only rules-based compliance regime to full implementation of SMS at stage five, and that report ranked the railway companies that it examined on that scale. It also used the same scale to evaluate Transport Canada's performance, one being that Transport Canada would have only a rules-based, inspection for compliance regime all the way to a full implementation of SMS, which would be an audit and monitoring system. They gave a ranking of three, and that was seven years after amendments were brought into implement safety management systems.

Your work points out some deficiencies. Using the same scale, has Transport Canada moved beyond the ranking of three or would you say that after six years since “Stronger Ties”, they may not have moved from that standard?

Mr. Michael Ferguson: Certainly, Mr. Chair, I can't try to rate where they are using somebody else's scale; that's not what we've done. In the panel report in 2007 we identified, in paragraph 21 of our report, that there were 56 recommendations and we have a few to rank them on the scale you're referring to.

Mr. Jeff Watson: Okay.

I have a question, on page 19 of your report, in paragraph 7.34, it says:

When implemented and maintained adequately, safety management systems provide assurance that a railway's operations are functioning safely on a day-to-day basis, or continuously improved when hazards or risks are identified.

Is that your view of safety management systems? Is that a qualitative assessment that safety management systems, if done right, are safe and the way to go?

Mr. Michael Ferguson: That's a statement of the goal of safety management systems. That's what the intent of using a safety management system is. We did not assess safety management systems as an approach, in general.

Mr. Jeff Watson: Regarding the CN/CP audits that were done, the audits of their safety management systems completed by Transport Canada, I believe you said that some eight out of fourteen audits were done on the two companies. Is there enough evidence at Transport Canada, based on those SMS audits, that CN and CP have functional SMS systems?

• (1610)

Mr. Michael Ferguson: I can't speak to the results related to any one company. Our results in the audit were looking overall at what Transport Canada does to oversee the implementation of safety management systems across all of the federal railway companies. Again, on an overall basis, we identified that there are many places where they need to improve how they're conducting those audits, but I can't speak to any one company on its own.

Mr. Jeff Watson: You did a pretty comprehensive overview of the regulatory framework in addition to safety management systems, and certainly the history of it. When you talked about all of the developments in it, what I didn't notice included was whether you are able to tell us if any rules or regulations were rescinded during the same timeframe you studied the additions that were made to it.

Mr. Michael Ferguson: That wasn't the focus of the audit so I can't speak to that.

Mr. Jeff Watson: In fairness, the history of the regulatory framework you have included presumably should at least have talked about whether any regulations or rules were rescinded. Would you not agree with that?

Mr. Michael Ferguson: The audit was intended to look at what issues exist and how Transport Canada is managing those issues. The intent of the audit was not to try to say that these regulations were added, or these regulations were removed. It wasn't that specific. It was trying to look at specific issues that have been identified around rail safety, the issues that have come to Transport Canada's attention and how it is managing those.

One way they may manage them or deal with a particular issue may be through regulatory framework, which may include adding or removing regulations, but that wasn't the goal of the audit.

Mr. Jeff Watson: This is just an item of curiosity for me. On page 10 of your report, paragraph 7.13, states:

With continued use of new technology, additional infrastructure, and traffic growth, it is important that Transport Canada oversees whether federal railways maintain effective safety management systems to identify new risks and implement strategies for improving rail safety in Canada.

This follows the introduction of new technologies.

Are you alluding to new technologies creating new risks, or as helping us to identify new risks or to solve risks? I'm not sure of the connection in that paragraph. I just want clarity on that.

Mr. Michael Ferguson: I think that paragraph is simply contextual, to let people know the environment changes continuously. It's not so much whether new technologies create risks or not, it's that new technologies may cause Transport Canada to have to change how they oversee the systems. They have to be able to react to new technologies.

The Chair: Thank you.

We now move to Ms. Sims, for five minutes.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much, and I want to thank all of you for coming.

It's my first time at this committee, and it's a pleasure to be here, Chair.

I come from the riding of Newton—North Delta, and while I know that much of this report is not directly about Lac-Mégantic and what happened there, I do know that in my riding there's a lot of concern about railway safety and the transportation of coal through the heart of the riding. So we are very worried about that.

When I read and heard your presentation, one of the things that really struck me was when you mentioned the key performance and risk data to target higher-risk railways and that the most significant safety risks were missing. A lot of data just isn't there.

In light of that, what type of data would help Transport Canada better plan safety inspection and audits, and what other kind of data is missing that they obviously need to get on top of?

Mr. Michael Ferguson: I'll start the answer if I may, and then I'll turn it over to Monsieur Chouinard.

Again, the fundamental issue for us there is risk assessment. When you are overseeing a system to make sure it's operating safely, it's important that Transport Canada has good risk assessment so it can focus its work on the areas of the most importance.

To be able to assess risks, you have to have data, you have to understand the environment you're working in. As for whether we noted any specific data as missing, I'll ask Monsieur Chouinard to respond to that.

•(1615)

Mr. Régent Chouinard: In our report, Mr. Chair, we indicate Transport Canada had some information. It got information from the Transportation Safety Board and planning.... It also had information or knowledge from inspectors who had been doing inspections in the past, but we noted a number of areas where information was missing.

One thing that we thought was important for Transport Canada to have was the federal railways' own risk assessment. They also didn't have information on the sections of tracks transporting dangerous goods, and making decisions on where and what to audit, and information on the condition of bridges, and also on the financial performance of these organizations. This is in paragraph 7.36 of our report.

Ms. Jinny Jogindera Sims: Thank you very much for giving me such a thorough answer.

I have to say that I was rather alarmed when I went on to read that Transport Canada had only completed 26% of the audits they had planned to do over a three-year period. Obviously we do have some gaping holes here, and I'm just hoping that we can get on top of this, because we don't need more Lac-Mégantic disasters.

Now I'm going to pass it over to you.

The Chair: You have two minutes.

[*Translation*]

Ms. Marjolaine Boutin-Sweet (Hochelaga, NDP): You said you completed your audit in June 2013. Is that correct?

[*English*]

Mr. Michael Ferguson: That would be when we completed what we refer to as the field work, so that's when we would have stopped actually collecting data. We would still have been in the report-writing phase after that.

[*Translation*]

Ms. Marjolaine Boutin-Sweet: So you weren't able to collect any information on the Lac-Mégantic situation, since the accident hadn't happened yet. You weren't able to establish a connection between the safety management systems and the accident.

As you mentioned earlier, in 2007, a report came out containing 56 recommendations. They included improving oversight of the safety management systems of federal railways and collecting data from federal railways to assess their safety performance.

According to your report, only 32 of those recommendations were addressed, meaning that 24 of them were disregarded. And, in fact, some recommendations have not even been fully implemented.

Were you given an explanation as to why it was taking so long to implement the recommendations?

[*English*]

Mr. Michael Ferguson: When we looked at the number of recommendations, we asked Transport Canada for their assessment of how many they had put in place. The table in exhibit 7.6 is their assessment of what they had put in place. Now, even though they assessed 32 as being completed, I think we also say in the chapter that they're saying that on some of those 32 there's still important work that's ongoing.

As to why it takes this amount of time, I think that's really what we are bringing forward to the committee, and it's really for the department to address. Our concern was that some of these issues had been around for a number of years. They've been trying to make changes in how they do things, and it's taking, as I think as I said in my opening statement, too long to complete. As to exactly why that is, only the department can respond to that.

The Chair: Thank you.

Now we'll move to Mr. Komarnicki for five minutes.

•(1620)

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you very much, Chair.

Thank you, Mr. Ferguson, for a detailed and thorough report.

I know that some critics have criticized the SMS as it moved toward safety deregulation. I didn't get that from your report. I know that the legislation provides that a safety management system must include 12 components, which are set out in there or the components specified. Now, your audit was essentially auditing whether Transport Canada sufficiently understood whether those railways that had SMS were complying with the requirements of what an SMS should include, and whether it was properly implemented. Is that what you were looking at?

Mr. Michael Ferguson: Certainly, as is normal in our audit practice, we don't audit government policy; we don't question government policy. What we audit is the implementation of policy, the policy around safety management systems, the regulations, the law around safety management systems. What this audit was about was how Transport Canada implements their responsibilities under that framework.

Mr. Ed Komarnicki: And it was also to see how SMS were being implemented by the railway companies relative to the legislation that was provided?

Mr. Michael Ferguson: Right. What we looked at were all of Transport Canada's responsibilities, to oversee that the rail companies had put in place safety management systems. That's what the audit was about.

Mr. Ed Komarnicki: You said the following in your conclusion:
In 2001, Transport Canada moved the Canadian rail industry towards a regulatory framework that includes a safety management system (SMS) approach.

You also said: the Department has made limited progress in shifting from the traditional oversight approach—largely based on inspecting federal railways' compliance with rules and engineering standards—to a system-based approach that integrates oversight of safety management systems into activities.

Did you have a sense, as you did the audit, that there was a changeover requirement from what used to be the old system to the new system incorporating safety management systems?

Mr. Michael Ferguson: Yes, and I think we outline that it was recognized in 1999 that they needed to make a change. In 2001 it was put in place. When we did the audit over the 2012-2013 time period, we found that there are still many weaknesses in the way Transport Canada is overseeing that change.

Mr. Ed Komarnicki: You're coming from the approach that if you're going to have a safety management system that must be implemented by the railways, do you as Transport Canada have the assurance that this is happening? That's where you then ask whether your audit is sufficiently broad with respect to that. Did you analyze the number of personnel, whether auditors or inspectors?

Mr. Michael Ferguson: That's right. Given that it's their responsibility to oversee that system, how did they go about doing that? What are their requirements, and what would we expect in good audit planning?

Mr. Ed Komarnicki: Then I guess if you came to a determination that you didn't have sufficient personnel, the next question would be, how many persons do you need? What would their qualifications be? What might it take to train them up to that particular competence?

Mr. Michael Ferguson: On the human resource side, those were the questions that we asked of Transport Canada. How many inspectors do you need to do the work? What skill sets do they need to have? What training do you offer them? Have they been trained? Those are the questions we asked of Transport Canada, and we found that they hadn't done the analysis to answer those questions.

Mr. Ed Komarnicki: If they were to do the analysis, obviously there would be a reasonable timeline and timeframe to implement how many people were needed, what competency they should have, and how long it would take to train them. You would expect this analysis to be done and then followed in some reasonable fashion.

Mr. Michael Ferguson: That's right.

Mr. Ed Komarnicki: Did you have any suggestions or recommendations with respect to any of that, or is it simply a matter of requesting that they make that analysis?

Mr. Michael Ferguson: We have a number of recommendations in the chapter. As I recall, one of the recommendations was related to the fact that they needed to do that analysis so that they would understand their resourcing requirements.

• (1625)

Mr. Ed Komarnicki: I understand that Canada is one of the first countries to implement an SMS system. Do you think this is a factor in the implementation? It's slower because it's new. Many people are getting on.... Is that part of what you saw might be a factor in Transport Canada's readiness or its meeting of some objective criteria that you expect of them?

Mr. Michael Ferguson: Again, we didn't assess why it has taken as long as it has to get to where they are. I can't speak to any one factor. What we simply saw was this identification that the change needed to be made. We're looking at it 13 years after the fact to see how much of it has been implemented.

The Chair: Thank you.

Now we'll move to Mr. Sullivan for five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you, Mr. Chairman.

And thank you to you three for being here.

It was a pretty bold statement that you made at the beginning, as well as last week, about the fact that 26% was the grade for how many actual assessments or audits of the safety management systems had been carried out. You conclude at the very end of the report that "the Department may not have the assurance it needs that federal railways are operating on a day-to-day basis in compliance with the regulatory framework for rail safety in Canada, or that they continuously improve their safety management systems."

As you've already indicated, you're not analyzing whether safety management is a good or bad system. It's more a matter of asking, now that it's here, is Transport Canada actually managing it effectively? Am I correct?

Mr. Michael Ferguson: That's correct.

There's a requirement for the companies to have safety management systems, and it's Transport Canada's responsibility to make sure they have enough information to know whether those safety management systems are doing what they're supposed to do. That's what our audit was about.

Mr. Mike Sullivan: Essentially it's been about 14 years, or since 1999, since this concept was first floated. Here we are in 2013, and Transport Canada is now telling you that it will take until 2016 to get to the point where they can be reasonably certain they'll be managing the system effectively—maybe. Because they've made these promises before about how long it's going to take, with response to the 2007 panel and the rest.

Are you reasonably certain that Transport Canada is going to meet these deadlines?

Mr. Michael Ferguson: I'm not going to try to judge whether they will or will not meet the deadlines.

I think what's important is that they have a clear action plan, with clear deliverables and timelines, and that there is a process to oversee that so we're not waiting until 2016 to find out whether they're meeting their timelines and milestones.

There needs to be some process in place so it's identified whether they're meeting individual milestones to see whether they will meet their 2016 deadline.

Mr. Mike Sullivan: Have they given you those milestones, and who is it who is going to oversee the meeting of those milestones?

Mr. Michael Ferguson: Well, again, I think that's what I would like to put in front of the committee really: to consider that question.

As I said, we recently received their action plan. We haven't had a chance to go through it. But what's important is that they have an action plan that is detailed enough that it has deliverables, milestones, and there is a process in place to oversee that.

That's something we are proposing to the committee to consider in its deliberations: what type of oversight for meeting that timeframe needs to be put in place.

Mr. Mike Sullivan: Canadians are wondering—and part of our job as parliamentarians is to bring their thoughts forward—whether or not the system is working effectively.

You may or may not have seen the news reports in the last couple of days about runaway trains that don't get reported. Nobody knows about them because they don't get reported. It's not surprising to Canadians, given that Transport Canada doesn't audit the safety systems enough to know whether they're actually working. It wouldn't surprise Canadians to know, and maybe it doesn't surprise you, that railways are apparently repeatedly not reporting safety infractions of transportation of dangerous goods, as an example.

Therefore, I think there's some urgency to get at this lack of oversight of the safety management systems. Wouldn't you agree?

• (1630)

Mr. Michael Ferguson: Again, I can't speak to anything that we didn't audit.

When I look at what we found in the audit and what we concluded, again, I said in my opening statement that it's taking them too long to put the oversight system in place. It's important to have the oversight. They've recognized it's important. I think, regardless of any particular incident that one might want to point to, this is important.

This oversight is important. It needs to be put in place, and it needs to be put in place properly.

Mr. Mike Sullivan: Do I have any more time?

The Chair: You have 10 to 15 seconds left.

Mr. Mike Sullivan: I have one quick question then.

Given that the number of railroads whose safety management systems the Department of Transport is having to oversee is increasing by 125%, is that an unimaginable hurdle for this group to manage, given that they haven't managed the 31 railroads they now are looking after?

I'm very concerned, as I think we all are, that we parliamentarians have just given them a more than doubling of their workload when they've only just done 26% of their first workload.

Do you have some recommendations as to how they should manage that bigger workload?

Mr. Michael Ferguson: It's something that we have raised as a risk moving forward—they being able to complete the audits they need to do. I think it is an additional component of the challenge of meeting the deadline they put in place for 2016.

The Chair: We'll now move to Mr. Braid for five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you, Mr. Ferguson and your team, for being here and for your very important work in this chapter of your report on rail safety.

If I may, I'd like to begin by sharing an impression I'm left with after reading your report. I'd like your thoughts on my impression.

My impression is that there's a culture of safety in Transport Canada and that SMS is an adequate system. There is a gap on the part of Transport Canada auditors and inspectors in following up on findings and holding railway companies accountable for those findings.

Could you comment on that impression?

Mr. Michael Ferguson: I would start by saying that Transport Canada has certainly identified that safety and security are focuses of the organization. We made no comment on whether safety management systems are or are not adequate, because, again, that's simply the policy. We audit the policy; we don't question the policy.

In terms of the gap, I think the gap in how they are doing the work goes beyond just gaps in follow-up. We identified gaps in all aspects of how they conduct the work, from planning to documentation to execution—in the follow-up, as you mentioned—to risk assessment. So the gaps, I think, were probably a little broader than you characterized.

Mr. Peter Braid: What about holding those responsible accountable?

Mr. Michael Ferguson: Again, we found a couple of things. For example, when inspectors identified an issue doing inspections rather than audits, they didn't take that information and say, "Well, does the problem we've identified in this inspection translate into a broader system-wide problem?" So that's one thing they needed to do.

Again, we found they were not always following up when they did find issues within the audits of the safety management systems. So if they're not following up to make sure the organizations are putting the improvements in place, then again there's room for them to improve on the accountability side as well.

• (1635)

Mr. Peter Braid: Thank you.

I note in your report, as well, that you speak to the issues of objectivity and independence of auditors and inspectors. Could you elaborate a little bit on that and underscore why those are important, what you found, and what you recommend?

Mr. Michael Ferguson: Objectivity and independence are critical in the conduct of any audit. So, for example, when we conduct an audit in our office, one of the things we do is have every team member who's going to be involved in the audit sign off on an independence form that says whether they have relatives working in the organization, whether they've ever worked for the organization, and those types of things. Making sure there's a good process to ensure that the auditors are objective and independent is important.

In this industry, I think it's also very important, because oftentimes inspectors have come from industry before, so perhaps they've worked in the industry. It is critical to make sure that the department is aware of which organizations it's assigning its inspectors to inspect and it is confident that everything is being done in an objective manner.

Mr. Peter Braid: Thank you.

I want to ask you next about enforcement mechanisms. Did you look at the suite of enforcement mechanisms available to Transport Canada and their effectiveness? What, if anything, did you study with respect to enforcement?

Mr. Michael Ferguson: It's my understanding that we didn't refer to enforcement in the chapter, and it's my understanding that in the sample of activity we looked at, there were no actual enforcement steps taken in those cases. It's not something we referred to in the chapter.

Mr. Peter Braid: Thank you.

In your opening statement, point five, you say:

However, despite discussions with the industry and progress over the past 20 years, a number of long-standing and important safety issues remain, including trespassing, grade crossings....

I wanted to ask specifically about the issue of grade crossings. Could you elaborate on your findings there, and your observations?

Mr. Michael Ferguson: What we found in terms of grade crossings is summarized in exhibit 7.8, where we summarized the different issues. Under grade crossings we identify some of the steps that have been taken over the last number of years, including the closure of some crossings, spending money on grade crossing improvements, and so on.

In that exhibit we identify some of the things they have done over the last little while, but also we identify that they still need to clarify the roles and responsibilities that the federal railways play in maintaining grade crossings. That's a piece of work that still needs to be completed.

The Chair: Your time has expired, Mr. Braid

I now go to Mr. Mai, for five minutes.

Mr. Hoang Mai: Thank you, Mr. Chair.

In your opening remarks, again number five, you talked about long-standing safety issues, and you also said it's "taking too long to resolve them".

Can you tell us, in terms of timeframe, when those issues have come up and why it's taking too long?

Mr. Michael Ferguson: I think the particular example that is easiest to refer to is the safety management system example. It was identified in 1999 that they needed to make a change from a system based on inspections to a system based on audits.

The actual regulatory framework was put in place in 2001. We did the audit in 2013 and still found the significant weaknesses that we've identified here. I think that alone speaks to the length of time.

When you add to that the fact that they are going to have more companies to have to oversee, and the fact that they still aren't where they need to be right now, it makes you wonder how much longer it's going to take to complete the work.

Mr. Hoang Mai: Since those issues were raised before, what was the government response at that time? Do you know?

• (1640)

Mr. Michael Ferguson: This is the first time we've done this specific audit, so they haven't replied to us in the past.

We referred in a couple of places to the review that was done in 2007, the previous time the standing committee looked at the issue. Again, we identified the level of progress the department says they have made on these issues. Many of these issues are still outstanding six years later.

Mr. Hoang Mai: That's a long time.

Maybe, with your experience, we can compare best practices. You're asking the committee, and I think we agree with your recommendation, to look at a system of oversight in terms of how we look at SMS and things like that.

Can you compare with other federal departments where they would have some sort of system or oversight system that we could base it on, or look at?

Mr. Michael Ferguson: I'm not sure I can pull an example to mind right now, but I think in this particular case, given that they've been working on this for a number of years and have said they are going to complete a number of things in 2016, it's important that there be something other than waiting for us to come back and do a follow-up audit, which we would start in, say, 2017, and maybe report in late 2018. There needs to be some other way of making sure the department itself is meeting its action plan.

Mr. Hoang Mai: Yes. When we have to look....

Since all of the information regarding safety management systems is not public, for us as parliamentarians to know exactly whether or not an SMS is good, or has been in place, or has been checked, what would you recommend for us that we could use as a tool to make sure those SMSs, if they're not being audited by you, are actually in place?

Mr. Michael Ferguson: I think what it comes down to is contained in the following questions. What is the department saying in their action plan? How detailed is it? Can you as a committee member understand each of the steps they are saying they are going to do? What could they present as evidence that they have completed? I think the process would be to get a detailed understanding of their action plan and how they can come back and demonstrate that they've met the milestones along the way.

Mr. Hoang Mai: You also mentioned that not all SMSs have been audited. How often should they be audited to make sure that they're in place and they're good?

Mr. Michael Ferguson: It's not a question that I can answer. Transport Canada has the responsibility to make sure they have enough evidence that the safety management systems are working. I don't know if the right number of audits is to audit every one of the companies over a three-year time period, or whether it should be some other time period. I can't answer that. They need to make sure they've done the analysis based on whatever level of confidence they want in those safety management systems. So I can't say whether it's the right number—whether it should be more, whether it should be less. They need to analyze that and have solid grounds for selecting whatever audit program they feel is sufficient.

The Chair: Thank you. Your time has expired.

Now I'm going to go to Ms. Young.

Ms. Wai Young (Vancouver South, CPC): Thank you so much for being here this afternoon, gentlemen. I think it's a really important study that we're doing. It's important because Canadians want and expect safe rail service and safe transport. I want to address a couple of key points in your summary, which I think are really interesting.

First of all, I'd like to reconfirm that you conducted this audit entirely independent of the Lac-Mégantic incident. It just happened that you were doing an audit on Transport Canada?

Mr. Michael Ferguson: We started the work, I guess it probably would have been in 2012, and we completed the fieldwork of the audit in June 2013, which was before the Lac-Mégantic incident.

• (1645)

Ms. Wai Young: When you say the fieldwork, does that mean you actually had auditors go out to different railyards or train stations to conduct the audit, or do you mean that you were at the headquarters of Transport Canada going through their files?

Mr. Michael Ferguson: We would have been looking at the work of the individuals in Transport Canada and what they did; some of them would have been in the regions. I believe all of our work would have been done with Transport Canada staff, wherever they are, not just in Ottawa.

Ms. Wai Young: Can you tell us the scope of your audit? Are you confident that this audit gives this committee the information we need for this report we're conducting?

Mr. Michael Ferguson: Certainly, that's the goal of all of our audits. We report to Parliament. When we do a report, we report the good things we find and the things that need improvement.

I think this report is a good overall summary of the situation in Transport Canada right now, and I think it should be a good basis for the committee to use to help improve this area of Transport Canada.

Ms. Wai Young: Given your answer, can we be relatively assured that we don't have to come back and do another audit on this matter with Transport Canada, that you feel confident that the scope of your work encompasses what we're studying here?

Mr. Michael Ferguson: Remember that what we did was look at a specific period of time. I don't think there should be any reason to have to go back and audit what happened in the period of time we audited. We did a thorough job on that.

What's important for the committee to understand is what's been happening since the time we did the audit.

Ms. Wai Young: I'm going to look at point number nine in your summary statement. You say in your audit that you concluded that Transport Canada needs to address the significant weaknesses you found in each aspect of the department's oversight of the safety management systems implemented by the federal railway companies. Otherwise, it may not have the assurance it needs that they are effectively managing safety risks on a day-to-day basis.

That's a pretty strong statement and it's quite comprehensive to my mind. What do you mean by it?

Mr. Michael Ferguson: We mean that the role of Transport Canada is to make sure it has enough information that it is confident the safety management systems in the federal railway companies are

operating as they're supposed to. Based on what we saw we felt they have not yet put in place a system that is sufficiently robust to give them the level of assurance they need to know that those safety systems are operating safely.

It's back to the fact that they need to do more work given what their role and responsibility is in this area. They need to do more work to get their level of assurance up about the adequacy of these systems.

Ms. Wai Young: In point number eight, just prior to this you say that "the audits it did complete were too narrowly focused."

Is that one of the issues here?

Mr. Michael Ferguson: Yes, and I think in the report we specifically referred to things like the way they have done their risk assessments.

If risk assessments are not sufficiently broad, if they don't take into account the identifiable potential risks, then you can focus on some things that have gone wrong in the past but you're not necessarily thinking about things that could go wrong in the future. That is what's important and part of why we said their approach has been too narrowly focused. It needs to be a risk-based approach considering what risks the industry faces.

Ms. Wai Young: Clearly, Transport Canada is responsible for its mandate, which is to look at safety but also at risk. Is that correct?

Mr. Michael Ferguson: Obviously they are responsible for their mandate. We feel that the best way to oversee safety management systems is to figure out where the biggest risks are, make sure those things are being audited, and make sure your resources are assigned based on those risks.

• (1650)

The Chair: Thank you. You're out of time.

Mr. Toet, for five minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

Thank you, Mr. Ferguson, and your team for being here, because this is definitely something very important.

I did want to start with one item that causes a bit of confusion for me. In your opening statement and your answers to some of the questions regarding the number of audits being done, correct me if I'm wrong, but several times I heard that the number of audits had been determined by Transport Canada, the number they should be doing in their plan. Am I correct in that?

Mr. Michael Ferguson: Certainly Transport Canada has determined the level of coverage they want and therefore what they need to audit. So yes, that was Transport Canada's decision.

Mr. Lawrence Toet: So they determine the number?

Mr. Michael Ferguson: Yes.

Mr. Lawrence Toet: On page 23 you have a header that reads, “Too few audits were planned for assessing federal railways' safety management systems”. It seems to be a statement that their plan was inadequate, and yet you've said many times over the course of the testimony today that you weren't assessing whether their plan was adequate or not, that they had just not met their plan.

I'm wondering if you stand by this statement or whether you want to add some clarification to it, because it does seem contrary to the evidence I've been hearing today.

Mr. Michael Ferguson: The issue that we've raised here is that, of the planned audits they've done, they didn't complete what they had planned to do. That is the issue, the fact that they had planned a certain coverage over a three-year time period and hadn't met that minimum coverage.

Mr. Lawrence Toet: So essentially the header should have read, “Too few audits that were planned were completed”. It just struck me that it seemed to be different than all the testimony I heard, and I just wanted to make sure that I had that right.

I want to confirm the following. Was your audit aimed at determining if the SMS was working effectively?

Mr. Michael Ferguson: We didn't assess whether the SMS was working or not working; that wasn't what the audit was about. The audit was whether Transport Canada was collecting the information it needed to understand whether the systems were working.

Mr. Lawrence Toet: So your report is essentially, to a large degree, a judgment of the shortcomings of the actual audit process of Transport Canada, and not necessarily an analysis of the actual safety record of rail shipments. You looked very much at their oversight. You didn't really look at what is really happening as far as safety in rail shipments in Canada are concerned.

Mr. Michael Ferguson: We didn't look at the actual practices of the companies. We didn't look at their safety management systems. We can't comment on how well those systems are operating. What we were looking at was Transport Canada and their role and whether they were collecting enough information to know those things.

Mr. Lawrence Toet: I guess that's important in light of the chart you included on page 6 of your report showing the accidents from 2002 to 2012. It actually shows, in absolute numbers, a decline, and as was pointed out by several of my colleagues across, that was when rail traffic was greatly increasing—yet the accident rate has gone down.

To me, I think that would indicate, to a certain extent at least, that the SMS system has been working. Whether it's perfect or not is not the judgment, but it seems to be the case, based on those absolute numbers, that accidents are going down when volumes have increased dramatically over the same period of time, and thus that there is something to be said for the SMS system actually working.

Mr. Michael Ferguson: The numbers that we've put in the report are the numbers. They are, I guess, sort of the facts. But I would be careful about drawing conclusions from those numbers, because certainly when you look at some of the more recent accidents, I think you have to factor in the seriousness of these accidents as well as the number of accidents before drawing conclusions just from those numbers.

Mr. Lawrence Toet: We all would agree that we want to eliminate accidents completely if we could. That's the aim. That's also why we're going through the study process to see what we can do to improve the safety management systems, if there are improvements that can be made and how to bring them forward.

I think it's important for the fact to be on the record that this report made absolutely no assessment of the SMS practices or standards of any rail company in Canada. You've really looked at the oversight aspect of Transport Canada and whether they have been doing their job properly.

● (1655)

Mr. Michael Ferguson: That's right.

Mr. Lawrence Toet: I want to get a little bit into the weeds of the SMS audits. We've talked quite a bit today about the number of audits, that they haven't met what they had set out to do, what their plan was, etc. I wonder if you can give us some specifics on the shortcomings of the SMS audits outside of that, outside of the 26%, which we've talked about a lot today. It would be good to have some specifics that you believe really need to be looked at closely by Transport Canada going forward.

Mr. Michael Ferguson: I think in the chapter in the report we go through a number of different aspects of how they conduct audits. Again, when you're planning to do audits, the first things that need to be considered are the risks being faced by the organization that you are auditing. As we say, it's things like the routes that the dangerous goods are transported on, or a number of other risks. That will help to focus the audits on the most important things. That's one part of it. That's in the planning area.

We've identified other issues. The documentation of the work isn't always complete, so it's not always possible to know what was done and what was not done.

We identified that senior management is not always involved in the planning of the audit. So senior management, who might have a broader perspective, might be able to provide some input into how to plan the audits.

I think we have a list of weaknesses in their methodology later on in the chapter. We talk about the fact that not all of the auditors have had the training they need to have.

We also talk again about the fact that they haven't looked at what they need to do, how many resources they need, what types of skills they need—so all of those issues of resource planning.

So really in all aspects of the audit function they need to improve how they're conducting those audits.

The Chair: Thank you.

We've now completed the first round, and our time will allow us to have one round here with Mr. McGuinty, and two over here. That's going to take us pretty close to the end.

I understand, Mr. Sullivan, that you're splitting your time with Ms. Boutin-Sweet.

Mr. Mike Sullivan: Yes.

The Chair: Thank you.

Mr. Mike Sullivan: I want to thank you again. We've asked way more questions of you than of many witnesses because your answers are so succinct and to the point that there isn't a whole lot of time wasted listening to your answers. I appreciate that.

You have indicated that Transport Canada has given you their plans and that we should be monitoring their implementation of those plans. Can we get a copy of Transport Canada's reports back to on their plans for meeting the recommendations you've made?

Mr. Michael Ferguson: I guess I'm surprised that they have not been provided to the committee. I'll have to—

Mr. Mike Sullivan: Not that I'm aware of.

Mr. Michael Ferguson: We'd have to follow up on that, but if they haven't been supplied to the committee, I'm assuming it's Transport's intention to supply them to the committee.

Mr. Mike Sullivan: Okay.

Mr. Michael Ferguson: It's something that should come from Transport, but we can certainly follow up on that with them.

Mr. Mike Sullivan: Okay. Because they were written to you, not to us...but thank you.

With regard to the risk analysis that they have or haven't done, we talked earlier about the fact that the number of railroads they have to oversee is going to more than double. In addition, over the period of time of your study, the amount of crude oil—which now we learn is very flammable crude oil—that has been transported by rail has gone from 500 carloads a year to 200,000 a year, or more.

Is that an example of the risk analysis that Transport Canada ought to be doing to determine whether or not a greater level of supervision of the SMS processes is necessary, as they apply to that kind of great increase in dangerous goods transport?

Mr. Michael Ferguson: The particular example we used in the chapter was that they were not taking into consideration in the risk assessments the routes that were being used to transport dangerous goods. Certainly, the fashion in which dangerous goods are transported would be another risk factor they need to consider. All of those types of things are examples of risk identification and, from risk identification, then Transport can determine what audits they need to do of what aspects.

• (1700)

[Translation]

Ms. Marjolaine Boutin-Sweet: Thank you, Mr. Chair.

Earlier, I asked you why the recommendations had not yet been put in place. You said you weren't given an answer.

In your view, could the reason be simply a lack of resources?

[English]

Mr. Michael Ferguson: The recommendations? I'm trying to remember the previous question exactly, but in terms of the recommendations....

[Translation]

Ms. Marjolaine Boutin-Sweet: I'm referring to the 2007 recommendations.

[English]

Mr. Michael Ferguson: Of the committee and the panel and that sort of thing.... Again, what we did in that situation was that we looked at the recommendations. We went to Transport Canada and we asked what they had done with relation to them. They gave us their assessment. We looked at their assessment and, in conversation with them, determined that even on some of the ones they said they had completed, they really still have some more work to do.

Again, I can't try to say why it's taken them so long to deal with some of the issues. That's really a question they have to answer. We're just bringing up the fact that some of these things were brought forward a number of years ago, and they still haven't solved them.

[Translation]

Ms. Marjolaine Boutin-Sweet: On the one hand, a number of recommendations have yet to be put in place, but on the other hand, the transportation of dangerous goods by rail has increased. Unfortunately, budgets have not followed suit. Transport Canada needs to analyze its resources. What's more, it will probably need to increase inspections, given that a much larger volume of dangerous goods will be transported by rail. It will also need to provide training. In fact, you said that 40% of inspectors didn't have the necessary training.

In your opinion, is it realistic to think all that can be taken care of by 2016?

[English]

Mr. Michael Ferguson: Again, it's really a question for the department to answer.

Certainly, though, one of the things we wanted to make sure that we brought out in this chapter is the fact that their environment was changing, that they are going to be responsible for the oversight of more activity, and that we have identified that they've had trouble getting to where they need to be. When you put all of those things together, you see that the challenge isn't getting smaller. The challenge is getting bigger.

Ms. Marjolaine Boutin-Sweet: I'll ask this in English.

The Chair: I'm sorry. Your time has expired.

Ms. Marjolaine Boutin-Sweet: I gather that they hinted at the fact that they need more resources. That's just what I wanted to say.

The Chair: Okay. You got your statement in. Thank you.

We now move to Mr. McGuinty for five minutes.

Mr. David McGuinty: Thank you, sir.

Mr. Ferguson, I have a couple of quick questions. If I can, I'm going to try here, in very plain English, to summarize some of the highlights of your report for Canadians.

Just to confirm, in the three-year period you audited, not a single audit was done of VIA Rail.

Mr. Michael Ferguson: Not a single audit. There would have been inspections.

Mr. David McGuinty: Not a single audit: four million passengers a year, that's 12 million passengers in three years, and there was not a single audit of VIA Rail.

Mr. Michael Ferguson: No audit was done of VIA Rail in that three-year period. There would have been inspections.

Mr. David McGuinty: For Canadians watching and reading, you say that the scopes of the audits themselves are very limited in nature. Correct?

Mr. Michael Ferguson: We identified that the scopes were limited, yes.

Mr. David McGuinty: You conclude, "These findings indicate that Transport Canada does not have the assurance it needs that federal railways have implemented adequate and effective safety management systems".

Basically it's concluding this isn't working.

Mr. Michael Ferguson: As you said, because you've read it directly out of the report, we concluded that they need to have more information, better information, about the level of operations of safety management systems.

Mr. David McGuinty: You said that even the methodology used by this department to determine the inspections is flawed, that it's out of date.

Mr. Michael Ferguson: We said they're still relying heavily on inspections and the inspections they're doing are still based on how they were doing inspections in the mid-1990s, even though much of their environment has changed since then.

• (1705)

Mr. David McGuinty: So they do one-quarter of the inspections they promised or planned to do and the way in which those inspections are done is flawed? They're not up to date.

Mr. Michael Ferguson: Again, be careful not to mix up the audits versus the inspections.

Mr. David McGuinty: Fair enough.

Mr. Michael Ferguson: It was in terms of their not doing all of their planned audits. On the inspection side, I can't speak to whether the inspections met the plan or not. We didn't talk about that. But what we identified from how they do inspections was that it's still based on how they did inspections in the mid nineties.

Mr. David McGuinty: In 2009 the government—not Transport Canada, we're not going to lay this at the feet of the officials—estimated they would need 20 system auditors to audit each railway once every three years. Correct?

Mr. Michael Ferguson: As I recollect, that was what they said they needed, although even that was not based on a detailed analysis of the actual audits they were going to conduct.

Mr. David McGuinty: So we have no idea how they arrived at that number, but they said 20?

Mr. Michael Ferguson: They said 20.

Mr. David McGuinty: Now they have 10 qualified inspectors, is that right?

Mr. Michael Ferguson: At the time of the audit, they had 10.

Mr. David McGuinty: So they have half of what they said they needed, and there's no analysis to backstop for why they needed 20.

Mr. Michael Ferguson: That would be right.

Mr. David McGuinty: And now they have to oversee 39 additional non-federal railways.

Mr. Michael Ferguson: I don't know the exact number, but they have to oversee additional railways.

Mr. David McGuinty: That's what your audit says.

Transport Canada doesn't know "whether its current staff of inspectors has the required skills and competencies" to do their jobs.

Mr. Michael Ferguson: Again, they did not have that analysis done.

Mr. David McGuinty: "Inspectors and managers were not trained on a timely basis."

Mr. Michael Ferguson: And I think we indicate the percentage of each who had completed the training on a timely basis.

Mr. David McGuinty: The government can't even warrant that the inspectors are objective, arm's length, and independent because they come mainly from federal railways, and the ethics codes and so on are not applied in such a way as to know for sure whether the folks doing these minimal inspections are objective and independent.

Mr. Michael Ferguson: They need to have a process in place to help them ensure that the people doing the work are independent.

Mr. David McGuinty: Mr. Ferguson, did you examine in any way, shape, or form the fact the Government of Canada, the Conservative government, has had five ministers of transport in less than eight years?

Mr. Michael Ferguson: It certainly was not part of our audit.

Mr. David McGuinty: If you were examining the audit, knowing there had been five ministers in less than eight years, what bearing do you think that would have?

The Chair: What's the relevancy, Mr. McGuinty?

Mr. David McGuinty: Mr. Chair, I think it's completely relevant to the performance of the department when it comes to rail safety, because ultimate accountability for the department is with the minister, if I understand our parliamentary democratic system, and by extension with the Prime Minister, as the prime minister among ministers in cabinet. So I think this is an important question. I'd like Mr. Ferguson to help us understand as parliamentarians what bearing having five ministers in less than eight years would have on continuity—

The Chair: You have a point of order, Mr. Braid?

Mr. Peter Braid: I don't think this line of questioning about the political situation, about ministers, about the Prime Minister is appropriate at committee when we have officials, particularly an official from such an objective office as the Auditor General.

The Chair: No, and for a change, we had a real point of order.

Voices: Oh, oh!

The Chair: And Mr. McGuinty, stick to the—

Mr. David McGuinty: We can debate off camera, Mr. Chair, whether that's a point of order or not.

The Chair: Well of course you have that prerogative.

Mr. David McGuinty: My view is that it's not a point of order, but we can talk about that later.

The government will have been in power for eight years in January. Would senior management continuity in a department like Transport Canada have a bearing on the ability to deal with rail safety? Reading your report for the third time, Mr. Ferguson, rail safety in this country is in crisis.

The Chair: You're out of time. Perhaps you'd let them answer, Mr. McGuinty.

Mr. David McGuinty: Yes.

Mr. Michael Ferguson: It's not really a question I can answer, Mr. Chair, because the impact of senior management was not part of this particular audit. It's not really a question I can answer.

The Chair: Thank you.

Mr. Watson.

Mr. Jeff Watson: Thank you, Mr. Chair.

That was an interesting shift in Mr. McGuinty's questions. Let me redirect. Does the Conservative government conduct a single inspection of rail track, to the best of your knowledge?

Mr. David McGuinty: On a point of order, Mr. Chair, I think this line of questioning is out of order. It refers to the political regime that we've just ruled out of order.

If you want to perhaps examine this, I think it speaks to Conservative politics, Conservative Party, Conservative responsibility.

I think we've heard, and your ruling is clear on this, that this is something that's outside the ambit of the line of questioning.

• (1710)

The Chair: Mr. Watson.

Mr. Jeff Watson: Well, I'm looking, and I don't see any references, by the way...

If I could answer the question for you, or you could answer it yourself. For example, on page 13, you say:

The Department has made significant progress in implementing many of the Review Panel's recommendations.

And you mention on page 12 the following:

...the Department has a process to identify and analyze safety issues, and to propose solutions.

...the Department worked with the industry to analyze the recommendations, identify solutions, and take action to implement them.

The Department was aware of most of the concerns raised by stakeholders because it works closely with the industry to keep abreast of new developments and important safety issues.

You have some thoughts on the Transportation Safety Board and its responsibilities. In every one of these...so Mr. McGuinty's line of questioning in some respects is absurd.

But let me move on and ask you some further questions. In reviewing Transport Canada's documentation related to their audits of safety management systems, even the focused ones, do you know at least some of what is in the SMS of CN or CP?

Mr. Michael Ferguson: This is what we would have done. We would have looked at the files related to any audits that Transport Canada had done related to particular federal railway organizations. But I cannot speak to the results or the systems that are in place in any particular federal railway.

Mr. Jeff Watson: All right.

You've given us a number of helpful recommendations. Transport Canada, as you've indicated, has proposed some sort of a work plan. This committee, I presume, will be asking Transport Canada for it, if they're not forthcoming with it, so that we can see it. I'm hoping that plan will prioritize which of the recommendations to address in most urgent order.

I would like to ask your opinion here. Is there a priority ranking to the recommendations, or do you have any guidance to offer this committee or Transport Canada on which of the recommendations, important as they all are, should be addressed first sequentially, or have greatest urgency or priority?

If everything is a priority, then nothing is a priority. Is there a sense of which would one be most urgent to address?

Mr. Michael Ferguson: We didn't go through and rank the recommendations from that point of view.

I think the other thing to remember is that our recommendations are at a fairly high level. We would expect that as Transport Canada puts in place its action plan, one of the things it would do would be to prioritize what needs to be done first.

Really, I think what I would do is look at how they've set the priorities and then question that so that they can defend how they've set the priorities.

Mr. Jeff Watson: Very good.

The minister has indicated publicly that she'd be more than happy to have you and your office come back in due course to assess the progress of Transport Canada against its recommendations. I presume you'll accept the invitation.

Mr. Michael Ferguson: We do follow-up audits from time to time on a number of different areas. Certainly this is one area that I would say we will seriously consider doing a follow-up audit on.

Mr. Jeff Watson: Okay.

In 2012 you audited the aviation side of regulatory oversight. If I recall correctly, that was chapter five of the report.

Is Transport Canada doing better on the aviation oversight side than they are on the rail side? And what would be one or two major differences?

Mr. Michael Ferguson: Again you're correct. We did the previous audit of aviation oversight. We didn't do a line-by-line comparison of the two. I think we found some similar issues in that it was taking a long time to deal with specific issues. We found similar issues, but whether one is better or worse than the other, we haven't really made that assessment.

Mr. Jeff Watson: On page 24, under inspections, it says:

If the department took these changes into account and relied more on the results of its audit work, it might have to conduct fewer inspections. It could conduct more audits using resources now devoted to inspections.

We have one side saying we need to do more inspections.

Are you saying in your report that we need to do more inspections or more audits?

• (1715)

Mr. Michael Ferguson: What we're saying is that Transport Canada needs to determine what it needs to do to get the needed level of assurance that the safety management systems are working. Based on what they have put in place, which is to focus more on audits...again, with audits, they test a system—

Mr. Jeff Watson: With due respect, Mr. Ferguson, it doesn't say that Transport Canada suggested it could conduct fewer inspections—or at least that's not what the language concludes.

Mr. Michael Ferguson: I'm getting to that.

Mr. Jeff Watson: I take that to mean that it's more your conclusion.

Mr. Michael Ferguson: When you do an audit, you are auditing a system. When you audit a system to determine whether the system

functions or not, then you can do fewer individual tests of the system, which is what inspections do.

Mr. Jeff Watson: But should inspection dollars be diverted to more audits?

Mr. Michael Ferguson: Therefore, it may be possible that if you can do fewer inspections, that will help fund doing the audits. I think that's what we're pointing out.

The Chair: Your first five minutes is done, Mr. Watson.

Are you okay?

Mr. Jeff Watson: Yes.

The Chair: Okay, very good.

I'd like to thank Mr. Ferguson, Mr. Laplante, Mr. Chouinard, for being here.

Thank you very much.

Mr. Watson didn't want his last five minutes, so—

Mr. David McGuinty: Can I have it?

The Chair: You can ask him, but I'm guessing he's not going to give it to you.

Mr. Watson, I'll let you speak for yourself.

Mr. Jeff Watson: No, Chair.

The way the routine rules of the committee are established, it's based on equity of questioning. We're finished with questions.

Thank you.

The Chair: Thank you.

Once again, thanks to our witnesses.

The meeting is adjourned.

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