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Chair

Mr. Larry Miller

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•(1530)

[English]

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

I'd like to thank our witnesses who have joined us, Mr. Boissonneault, Ms. Saskiw, and Mr. Rubinstein; and by teleconference, we have Mr. Tim McMillan. Thanks very much.

Mr. McMillan, can you hear me?

Mr. Tim McMillan (President and Chief Executive Officer, Canadian Association of Petroleum Producers): Yes, I can hear you loud and clear.

The Chair: Very good.

In case we run into technical difficulties, Mr. McMillan, we're going to start with you.

I'll turn it over to you for 10 minutes or less.

Mr. Tim McMillan: Great.

Good afternoon. Thank you, Mr. Chairman and members of the committee.

My name is Tim McMillan. I'm president and CEO of CAPP, the Canadian Association of Petroleum Producers. Our industry association represents both large and small companies on the upstream aspects of oil and natural gas. We represent about 90% of the oil and natural gas produced in Canada.

The goal of this bill is to improve accountability through increased liability by railways that carry crude oil and other designated goods. In this bill, provisions are made for appropriate insurance for railway companies, which will be available if accidents involving crude oil or other designated goods happen. Provisions are also made for a supplementary compensation fund—the fund for railway accidents, financed by crude oil shippers—similar to what is in place for marine transport.

To put the issue of rail transportation in perspective, today Canada produces about 3.7 million barrels of crude oil per day. We ship the majority of that on pipelines, but about 5%, 200,000 barrels a day, is currently utilizing our rail system. We expect that number to grow in the coming years. Canada has been endowed with great resources—valuable resources that contribute greatly to the prosperity of our country and its people. Maintaining the competitiveness of this resource is a key priority.

Safety is paramount to our industry. We are committed to the safe, environmentally responsible development of the resource, and, as

such, operators are responsible for and face the liability for their decisions.

We are not alone in this business. Our industry relies on others to transport our products to market. Pipelines are responsible for the safe transport of oil that they accept for shipment. They face the liability if there is a failure and a loss results. The shipper may also see costs of the insurance reflected in the rates charged by the pipeline, but the liability is clearly on the pipeline. This reinforces accountability.

We support a system for rail transportation that also is based on the liability of the carrier, coupled with a regulatory system that ensures that the carrier's commitment to safety is achieved. In broad terms, we are pleased that steps are being taken through this bill to reinforce accountability to support the commitment to safety of rail carriers.

Canadian oil is not the only oil making use of the Canadian railway system. There has been tremendous growth of U.S. oil production, and that oil is finding its way to eastern Canadian refineries. In fact, imports of U.S. oil are substantially displacing offshore oil transported by ships in eastern Canada. We want to make sure that all oil carried on Canadian railways pays into the new fund. We also want to make sure that payment into the new fund is collected only once. We have pointed out areas where we feel the language in the bill could be improved to ensure that this intent is clear.

I should also mention that crude oil is not the only commodity moved by rail that is categorized as hazardous. There are many other dangerous goods transported by rail. We are firmly of the view that rail safety is not simply an issue of crude oil. We believe that all dangerous goods should be designated and contribute to the new fund.

In the event of an accident, there must be effective response and responsibility. These are matters of great concern for our members. CAPP has been supportive of and engaged in the many initiatives taken to enhance rail safety. It is the railway's commitment to safety that we all acknowledge and rely on. Likewise, it is the railways that are accountable and bear the liability. We believe that if a shipper contracts with a major railway company to carry a shipper's oil and the railway company makes use of another smaller railway where an accident occurs, then the liability under Bill C-52 should fall on both companies. This will make the higher insurance held by the larger company available to compensate for the loss.

● (1535)

While the bill contemplates that more than one railway can be liable for an accident, the bill is not clear on how that liability would arise. We have pointed out an area in our written submission where the language of the bill could be improved to provide more clarity.

In regard to the new fund for railway accidents, the equivalent marine liability fund is capped. We look to the government to place a cap on the fund at the \$250 million target that was mentioned in the House on March 30, 2015.

With that, Mr. Chairman and committee members, thank you for your interest and for including CAPP and our perspective in your discussions today. Thank you very much.

I look forward to your questions.

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

We'll now move to representatives from the Federation of Canadian Municipalities, or FCM.

Ms. Saskiw, you have 10 minutes or less, please.

Ms. Jenelle Saskiw (Mayor of Marwayne, Alberta, Federation of Canadian Municipalities): Thank you very much. Good afternoon and thank you, Mr. Chair, for your introduction and thank you to the committee members for extending an invitation to the Federation of Canadian Municipalities to participate in your study of Bill C-52, the safe and accountable rail act.

The FCM last appeared before your committee in March 2015 as part of your study on Bill C-627, an act to amend the Railway Safety Act and we are pleased to be here again today.

I am the mayor of Marwayne, Alberta; the chair of FCM's standing committee on municipal transportation and infrastructure; and the co-chair of the joint proximity initiative between FCM and the Rail Association of Canada. I'm happy to be here today to represent FCM as co-chair of the National Municipal Rail Safety Working Group. The working group was established after the tragic derailment that devastated the community of Lac-Mégantic in 2013. Our work is guided by three priority areas: to equip and support municipal first responders to rail emergencies, to ensure that federal and industry policies and regulations address the rail safety concerns of municipalities, and to prevent the downloading of rail safety emergency costs to local taxpayers.

I'm joined today by Daniel Rubinstein, manager of policy and research at FCM and our policy lead on rail safety and the transportation of dangerous goods.

The Federation of Canadian Municipalities is the national voice of our municipal governments. Our member municipalities come from every corner of Canada and collectively represent over 90% of Canada's population. Members include Canada's largest cities, all urban and rural communities, and 20 provincial and territorial municipal associations. In leading the municipal movement, FCM works to align federal and local priorities, recognizing that strong hometowns make for a strong Canada.

FCM is an active participant in a number of initiatives related to rail safety and the transportation of dangerous goods. We are members of the TDG general policy advisory council, the advisory council on railway safety, and Transport Canada's emergency response task force. We also actively engage Minister Raitt and Transport Canada's senior leadership on these critical issues.

Before speaking on Bill C-52, I want to reiterate for committee members that FCM and the National Municipal Rail Safety Working Group are guided by the essential work undertaken by the Transportation Safety Board of Canada. The TSB serves a critical function in making safety recommendations to the federal government. At FCM we believe that the standard for progress is full implementation of TSB safety recommendations. My colleagues and I from FCM are pleased that the government has substantively responded to the TSB's reports and recommendations following the tragedy in Lac-Mégantic. We expect the same type of response once the TSB has completed its investigation into the recent derailments in northern Ontario and has made additional recommendations to government.

In terms of the focus of today's meeting, let me say a few words about Bill C-52. The key elements of the legislation respond directly to concerns raised by FCM related to insurance and liability, information sharing, and Transport Canada's oversight of federal railways. The bill is an important step forward in improving the safe transportation of dangerous goods by rail. The changes to insurance requirements for railways and a new levy for crude oil shippers, in particular, will address an important concern of municipalities and ensure that those affected by rail emergencies at the local level are fully compensated. While we understand the decision to focus on the risks posed by crude oil shipments, we hope that Transport Canada will look closely at the possibility of expanding the new levy to shippers of other dangerous goods once Bill C-52 has come into effect. It is a positive sign that the legislation includes the ability to scope in other products in the future.

Bill C-52 also represents an important step forward in providing both the minister and the railways inspectors with new powers that will allow for specific corrective actions to be ordered in the event of unsafe railways operations. This includes new power for the minister to issue an order to address any threat to safe railway operations, as opposed to only an immediate threat under the existing railway act. FCM is pleased to see these measures included in Bill C-52, as they should provide the regulator with additional tools to improve rail safety.

• (1540)

Bill C-52 also includes provisions for Transport Canada to develop expanded regulations on information sharing between the railways and third parties, including municipalities. Municipalities need to know about potential risks associated with rail corridors in their communities to reduce the safety risks related to the transportation of dangerous goods by rail and to ensure that local services can plan and respond effectively to emergencies. We look forward to a detailed discussion with Transport Canada on the development of these regulations.

Now, I will shift from the provisions in Bill C-52 to land use planning near rail corridors. As discussed at our last appearance on Bill C-627, FCM and the Railway Association of Canada are committed to building common approaches to the prevention and resolution of issues that may arise when people live and work in close proximity to rail operations. In May 2013, we unveiled new proximity guidelines and a new website intended to promote best practices and awareness about the issues associated with developments near railway operations. Several of Canada's largest cities are now in the process of studying how best to implement these guidelines locally.

Given the considerable interest in proximity issues at our last committee appearance, I want to reiterate that a one-size-fits-all approach on proximity issues is not suitable for a country as geographically and jurisdictionally diverse as Canada. Thus it is critical for the federal government to continue to work closely with provincial and local governments on any new policy initiatives related to land use in proximity to railway operations.

These are a few of the policy areas where proactive and ongoing discussions between FCM and our member municipalities, the federal government, and industry have resulted in concrete reforms that will improve the safety of Canada's railways.

That said, unfortunately our work is not yet done. As derailments continue to occur, again we look to the TSB to provide Canadians with analysis of the causes of recent derailments and recommendations to further improve rail safety in Canada. We look to the government, the rail industry, and the Parliament, through this committee, to ensure that any recommendations are implemented in full.

In closing, FCM welcomes a new insurance and third-party liability regime for railways and dangerous goods shippers, as well as new measures to expand and clarify the oversight and enforcement powers of the minister, the CTA, and railway safety inspectors, including the amendments to the Railway Safety Act and Canada Transportation Act in Bill C-52. We hope that Transport

Canada and the Canadian Transportation Agency will ensure that these powers are fully implemented as soon as possible.

Again, thank you very much to the committee for giving FCM the opportunity to present our municipal perspective on Bill C-52. Daniel and I will be happy to answer any questions in regard to the bill, as well as any other issues related to rail safety and the transportation of dangerous goods by rail through our municipalities.

Thank you.

• (1545)

The Chair: Thank you very much.

We'll now go to Mr. Paul Boissonneault, from the Canadian Association of Fire Chiefs, for ten minutes or less.

Mr. Paul Boissonneault (Fire Chief, County of Brant Fire Department, and President, Canadian Association of Fire Chiefs): Thank you, Mr. Chair, and good afternoon, everyone.

My name is Paul Boissonneault. I'm the fire chief for the County of Brant, Ontario, and president of the Canadian Association of Fire Chiefs. Founded in 1909, the CAFC is an independent, non-profit organization representing approximately 3,500 fire departments across Canada. As the voice of the fire services in Canada, the CAFC promotes the highest standard of public safety in an ever-changing and increasingly complex world. The CAFC acts as the national public service association dedicated to reducing the loss of life and property from fire.

Canadian communities face an ongoing and growing risk from the consistent and substantial increase in the quantity of dangerous goods being shipped, particularly flammable class 3 liquids shipped by rail over the last five years. In the case of crude oil, we went from 500 carloads in 2009 to an estimated one million barrels per day today.

This risk has been realized in an increase in the number of accidents and near misses involving these goods. In 2013 there were 144 accidents involving dangerous goods, seven of which resulted in a dangerous goods release. When these accidents occur, firefighters will almost inevitably be the first responders on the scene.

Canada's economy and thousands of jobs depend on the safe and timely production and transportation of dangerous goods. They are essential to a variety of industries. The risk they pose to communities and the environment, however, needs to be better managed.

The tragic derailment in Lac-Mégantic highlighted the need to further strengthen the rail regime to ensure there are sufficient resources to fund response and recovery in the event of a disaster. The cleanup costs alone have been in the hundreds of millions of dollars, but the railway company had third-party liability insurance of only \$25 million and has subsequently gone bankrupt.

Because railways will never be able to prevent all accidents, all of us have the shared responsibility of mitigating the community impact of a train derailment involving dangerous goods in Canada. To do so, we need a system that improves the liability and compensation regime of Canada's railways. CAFC believes Bill C-52 is a step in the right direction as it protects municipalities, the fire service, and more generally, Canadian taxpayers from having to bear the substantial financial responsibility of a catastrophic incident.

Extending the responsibility for compensation to railways and shippers embraces the polluter pays principle, a notion that CAFC has supported in the past. Requiring shippers to share the liabilities associated with the transport of their goods reflects the fact that the qualities of their product contribute to the risks and costs associated with an accident. Moreover, while CAFC recognizes that a drop in oil prices is putting a strain on shippers, the risk posed by their products remains the same regardless of the price.

Since the Lac-Mégantic derailment, CAFC has been asking government to consider a modest, true-cost user fee levied on a per-tanker-car basis payable by the shippers for all class 3 flammable liquids, dangerous goods transported by rail to establish a flammable liquid firefighter training fund. Since the bill does not address the serious firefighter training gap that currently exists in Canada, we would ask this committee to consider a mechanism to fund this training, such as through a small allocation of the disaster relief fund.

Few fire services, whether career, composite, or volunteer, have the necessary training or specialized equipment to adequately respond to these incidents involving flammable liquids transshipped via rail through their areas of responsibility. The issue has been raised in several accident investigation reports from the Transportation Safety Board. Most firefighters in Canada are trained to firefighter level 1 and some are further trained to a hazardous materials awareness level, which is only a basic level of training. Moreover, neither training is adequate for responding to railway incidents involving multiple tank cars of class 3 products in a large-scale fire situation.

The lack of specialized training increases the probability of serious consequences during this response. Properly trained firefighters have the ability to assess a situation, understand the intervention's risks based on the products involved. This in turn would allow them to take appropriate actions to protect themselves, the public, property, and the environment, thus mitigating the impact of the incident.

The CAFC has been working with various industry stakeholders to help develop and promote training programs for fire departments, municipal officials, and emergency planners. It is imperative that we provide firefighters with the appropriate training and equipment for these types of incidents.

Another aspect of Bill C-52 that the CAFC supports is the ability of a province or municipality to apply to the Canadian Transportation Agency to recoup costs it must pay as a result of putting out fires caused by railway operations. This new authority would allow the Canada Transportation Agency to determine whether in its view the fire was indeed caused by a company's railway operations, and relieve the financial burden of these fires on provinces, municipalities, and specific fire services.

• (1550)

Overall the CAFC welcomes Bill C-52 because it defines the liability of railways in order to provide claimants with a greater certainty of compensation. It builds upon recent government actions focused on strengthening rail safety and the transportation of dangerous goods. It is consistent with liability and compensation regimes used in other modes and sectors.

The CAFC does have some concerns with the bill. First, we would like to ask the committee to reevaluate the \$250 million limit for the disaster relief fund. Considering the costs of the Lac-Mégantic tragedy, we believe that a higher limit is required to ensure that the fund is able to meet its objectives in the case of a large-scale disaster.

Second, recognizing that crude oil is not the only product that could cause significant damage if involved in a rail accident, we ask the committee to consider the inclusion of other dangerous goods, such as propane and chlorine, in a shipper-financed fund amendment.

Third, the bill gives authority to inspectors and the minister to order a company to immediately correct safety problems. This is very important, but ensuring that there are enough inspectors with all the required resources to audit the safety management systems is as important in preventing these incidents.

Fourth, the bill allows for requirements related to information sharing between railways and municipalities to improve the response in case of emergencies. The proposed changes to the regulation do not reflect the level of detail contained in protective direction 32 of the Transportation of Dangerous Goods Act. This direction requires disclosure of yearly aggregate information on the nature and volume of dangerous goods to the designated emergency planning official of each municipality through which dangerous goods are transported by rail. We cannot stress enough the importance of this information for emergency response planning as well as immediate access to train manifest information and material safety data sheets when a derailment occurs.

Fifth, the CAFC believes that maintaining and strengthening the Canadian Transport Emergency Centre should be part of the current regulatory revisions. CANUTEC is a vital resource for emergency response with planning and real time support during a dangerous goods incident. It is the equivalent to a first responders' call for 9-1-1. Its industry leading emergency response guidebook and its experienced 24-hour-a-day professional chemists assist emergency responders with advisory and regulatory information in the event of a dangerous goods accident.

Finally, despite the progress achieved to date in railway safety and accountability, our work is not yet done as derailments continue to occur. CAFC believes that greater emphasis should be placed on the prevention of these incidents through increased safety and monitoring measures. We should be proactive in planning rather than reactive in emergency response. The CAFC is committed to continue working with government, industry, and this committee to ensure that first responders have the information, training, and emergency planning protocols to protect Canadians and our communities when incidents occur.

We recognize Bill C-52 is a step in the right direction in the government action required to address the evolving risks associated with the transportation of dangerous goods in Canada.

On behalf of the CAFC, our chief fire officers, and firefighters from across Canada we thank the committee for this opportunity to share our point of view. I look forward to any and all of your questions.

• (1555)

The Chair: Thank you very much to all of you for keeping to your time.

We'll now move to questioning.

Mr. Mai, you have seven minutes.

[Translation]

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

My thanks to the witnesses for being here.

Let me start with you, Mr. Boissonneault. First of all, thank you for your work as a firefighter. We see how important your work is every day. We also saw how important the firefighters were at Lac-Mégantic.

You have really hit the nail on the head. Of course we have to make sure that there are enough inspectors. You also mentioned CANUTEC. Both those points have been in NDP recommendations.

You also mentioned training, which is an issue I have been bringing up for a long time. There are costs associated with training firefighters. You suggested that part of the relief fund go directly to that. Do you have an idea about the amount, the percentage, you need? Do you have any figures on that for us?

[English]

Mr. Paul Boissonneault: Thank you for the question.

The exact cost of the training is not known at this point, simply because what we're looking at is establishing a minimum criteria, at

least for an awareness level. Because over 80% of the fire service in Canada is by volunteers, we have a very diverse fire service. It is a challenge to ensure that all people are trained to the same standard. Certainly, municipal resources in larger cities are far more prevalent than in some of the smaller communities. However, railway lines go through those communities, as we have seen. The last time that I presented to this committee, I applauded the efforts associated with the mutual aid and automatic aid responses, specifically within the Lac-Mégantic response area, because it really was a coordinated effort that helped deal with the situation. The reports arising from that show that there's a need for standardized training and resource allocation so that we can better respond to these emergencies in the future.

Much like the National Fire Protection Association's standard for hazardous materials training in general, there's an awareness level, an operations level, and a technical level. There would still be the autonomy within specific municipal sectors for smaller departments to gain at least an awareness level, and maybe a larger city could get to a technical level. However, right now there is no basis at all for at least an awareness level training program specific to class 3 flammable liquids, and that has to be absolute.

[Translation]

Mr. Hoang Mai: I am going to ask the representatives of the Federation of Canadian Municipalities to comment on that, since municipalities have to assume a good part of the costs of training, resources and equipment for first responders.

Do you support the idea that money from the disaster relief fund should be used to pay for things like training and equipment, which normally fall to municipalities?

• (1600)

[English]

Ms. Jenelle Saskiw: Absolutely. It is something that we would consider. We would have to work through some details.

I am mayor of a tiny community of 700 people, so I understand what it's like to work with a volunteer fire department of a few members and not having a guarantee that the members are actually in our municipality should disaster strike. For that reason, I would like to entertain the idea of also having training for police officers. We often see that they are the first ones on the scene, before the firefighters get there. It's something I would entertain discussing in the future, definitely.

[Translation]

Mr. Hoang Mai: Have you had discussions with the government on the funding that goes directly to that? Has anything been done along those lines?

My question also goes to Mr. Boissonneault.

[English]

Mr. Daniel Rubinstein (Manager, Policy and Government Relations, Federation of Canadian Municipalities): I can speak to that briefly. We are members of Transport Canada's emergency response task force, as Ms. Saskiw mentioned. The task force was given a mandate to look at the emergency response after Lac-Mégantic, specifically around flammable liquids. One of the key pieces is how to improve training. We agree with the fire chiefs that there needs to be an awareness level across the board, and that there needs to be a technical level where appropriate. The mechanism to fund that has not yet been arrived at. The task force has the mandate of establishing the levels that are needed, and that work is ongoing.

[Translation]

Mr. Hoang Mai: My next question goes to the Canadian Association of Petroleum Producers.

In 2009, there were 500 crude oil tanker cars in circulation. In 2013, there were 160,000.

Could you tell us how many there were in 2014 and how many you project for 2015?

[English]

Mr. Tim McMillan: Certainly. We know that only about 5% of our current production is going out on the rails, and our numbers reflect that it's about 200,000 barrels a day. We expect that is going to increase incrementally over time, but today it's about 200,000 barrels.

Mr. Hoang Mai: Could you translate that into approximate carloads per year for us? The reference we had in 2009...or maybe you can submit it to the committee when you get the numbers, just so we can really understand the importance of crude oil circulating on rail.

The Chair: I believe Mr. McMillan is trying to get that answer.

Maybe you could give it to us when you get it, Mr. McMillan.

Mr. Tim McMillan: Certainly. We're doing the math here, and I hope we will have it before the committee adjourns.

Mr. Hoang Mai: Okay.

I have a question for you and Ms. Saskiw.

We heard from the fire chief about other goods that could be covered: propane and chlorine.

Do you have any specific suggestions regarding dangerous goods that maybe should be part of the disaster relief fund, or that should be levied?

Ms. Jenelle Saskiw: We've definitely had that discussion. We are open to any possibility. We don't want to just have crude oil singled out; there are a lot of different commodities that fall in the same category.

One of my concerns from a municipal standpoint, especially when we talk about chlorine, is to ensure that the cost of the levy or the shipment isn't downloaded back on to municipalities.

That is something that the minister is aware of; we've brought it from our working group. That's something I want to ensure doesn't happen.

The Chair: Thank you.

Mr. McGuinty, for seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

Thank you for being here this afternoon.

Chief Boissonneault, what is the budget of CANUTEC right now? Do you know?

Mr. Paul Boissonneault: I do not have the exact budget of CANUTEC at this time.

Mr. David McGuinty: Who funds it?

Mr. Paul Boissonneault: I'd have to get that information specifically on how it's funded. I believe it's through the Canadian Transportation Agency.

That would probably be a better question for government.

Mr. David McGuinty: I'm trying to get a sense about their resources because you've raised a whole series of important questions about resourcing through your brief. I want to go to that for a second, if I could.

I want to set this in context. It's an undeniable fact that the government just cut the budget of Transport Canada by 11%. We've lost \$202 million at Transport Canada going forward. That's 11% of the entire department's budget.

Now, we know that this is five months before an election, so we know what really is going on here. It's the shell game around deficit elimination and grabbing money wherever they can to be able to message that out to Canadians. But these are the real front-line effects of the kinds of cuts we're seeing.

I want to raise a second point that you raised, which is on the question of inspectors and inspections. You made the very important point that giving authority to inspectors and others to immediately correct safety problems is one thing; it's an entirely different thing if there are not enough inspectors to perform the safety audits under the safety management systems.

Why don't you expand on that for Canadians, in the context of an 11% reduction in spending at Transport Canada?

● (1605)

Mr. Paul Boissonneault: I think it would be very challenging for me to comment on an 11% reduction without knowing specifically which areas those would be. That would be a question probably better suited for government.

With regard to CANUTEC, that is a vital resource. I use the analogy that when an incident occurs, essentially that is a first responder's call for help, just like when somebody has an emergency they call 911 to make sure the right people get there with the right resources, on time, to make their day a little bit better. The emergency responder community is just the same.

CANUTEC serves as a vital resource in the event of an emergency, especially something on as large a scale as a train derailment. We can understand, through chemist expertise as well as regulatory information, how we should best deal with these emergencies, and set the stage for the property resource allocations as they start becoming available to us.

Specific to the inspectors, I guess I would use the analogy that in my own fire department we have a fire prevention week once a year. If that were the only week in which we did fire prevention activities, we would probably have a very ineffective program. We have a management program for our fire prevention that is year-round.

My comment specific to the inspectors is to ensure that you can have the proper preparation in a planning stage. The right amount of inspectors and the right level of enforcement have to exist. What that number specifically is, and how that's defined, would be certainly set forward by—

Mr. David McGuinty: I appreciate that.

The reason we're having to ask you, chief, in your capacity here today is that last week we asked the minister four times and she wouldn't answer. She won't tell Canadians what's going on with the cuts in her own department. She's hiding them. So we're having to turn to other folks on the front lines, such as you, who are having to perform really difficult tasks.

In fact, your brief is full of asks for money, for support, and for training. It looks as though you're cobbling onto a quickly pulled-together bill by the government, trying to find resourcing that you need to do your job and that your teams need to do their jobs around the country. It's unfortunate, because when a department is cut by 11%, that's what good folks like you are compelled to do. You have to come here and beg Conservative MPs and the majority of this committee to cobble together some kind of funding mechanism so that you can do your jobs with safety.

I want to turn, if I could, to the second them and ask all three of you very quickly, do any of you, including Mr. McMillan, know the final numbers so far for the cost at Lac-Mégantic?

I'll start with you, chief.

Mr. Paul Boissonneault: I don't have the exact numbers. The only information I was provided is that thus far it has exceeded \$250 million, to date.

Mr. David McGuinty: Thank you.

FCM.

Mr. Daniel Rubinstein: We don't have the exact number, but it's well in excess of half a billion.

Mr. David McGuinty: Well in excess of half a billion?

Mr. Daniel Rubinstein: I believe it's over half a billion, but I don't have the exact number.

Mr. David McGuinty: Mr. McMillan, are you tracking that, in your capacity as president of CAPP?

Mr. Tim McMillan: No. We don't have the exact numbers.

Mr. David McGuinty: Okay.

If it's over half a billion, somewhere between \$250 million and half a billion, and CAPP doesn't have the numbers, Mr. McMillan, why is \$250 million the right amount of money or the wrong amount of money?

•(1610)

Mr. Tim McMillan: In this bill it prescribes two things. It prescribes the insurance requirements for railways—

Mr. David McGuinty: I know what it prescribes, Mr. McMillan. I just need to hear from you, is \$250 million the right number or the wrong number?

Mr. Tim McMillan: We think that \$250 million is the right number, when you take into account that the prescribed insurance will be a billion dollars and the \$250 million is a top-up above that.

Mr. David McGuinty: Even though the cost of Lac-Mégantic could be, for example, as high as a billion dollars by the time all the environmental and river clean-up is done?

Mr. Tim McMillan: Yes. In this bill it prescribes the insurance requirements for the large railway, for the small railway, and this here is a top-up above that.

Mr. David McGuinty: Great.

Mr. McMillan, your brief raises a whole series of really important issues that were not addressed in this bill. You have some really profound concerns, things like “it is not clear how this liability would arise”, under your point 31; and “it is not clear from this how more than one railway would become liable”. And you say this “would not be our understanding of how the new regime is to work”.

You go on to make a whole series of tough points about this bill. Let me ask you, were you consulted about this?

Mr. Tim McMillan: Yes. We put in a presentation on this. We would like to see more clarity about how the liability for two parties would be treated.

Mr. David McGuinty: Thank you.

The Chair: Thank you.

Mr. Watson, seven minutes.

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

Thank you, of course, to our witnesses for appearing here today.

Let me start with the Canadian Association of Petroleum Producers.

On the number of carloads of oil by rail, our committee came to an estimate that it was 110,000 carloads in 2014, based on your statistics of 181,000 barrels a day in 2014, at some 600 barrels a tank car, or somewhere in that range. We look forward to whether you can confirm that.

When will you know what the first quarter will look like for 2015 and how that will compare with 2014 or 2013 in terms of oil by rail? When will you know first quarter stats? Our committee would have an interest in having the info.

Mr. Tim McMillan: I can confirm with you—we did the rough math, as well, to the question earlier—that it is about 400 to 450 carloads a day of crude oil leaving our producers.

As far as the statistics—

Mr. Jeff Watson: For 2015 first quarter?

Mr. Tim McMillan: No, of 200,000 barrels a day, which is what we're currently sending out on rail on average, that works out to about 400 to 450 carloads.

Mr. Jeff Watson: When you say 200,000 barrels a day, that's a 2015 number.

Mr. Tim McMillan: For specifics on carloads, the railroads would be tracking those numbers. They would have access to the exact....

Mr. Jeff Watson: Your brief argues that rail only should have liability. That is the principal position of CAPP, that shippers should have no liability relative to any other compensation costs, any cleanup costs, or anything like that in the event of an accident involving a railway company. Is that your principal position?

Mr. Tim McMillan: We believe in the principle put forward in this bill, which is consistent with pipelines, that the shipper takes responsibility for the carrying of the product, and that aligns the responsibility with those who are most able to make the safety changes required to have an excellent system here in Canada.

Mr. Jeff Watson: We just heard the Canadian Association of Fire Chiefs, which took the position that the qualities of the product itself pose considerable risks. You don't think that those who are asking the railway companies to move oil by rail should bear any liability then?

Mr. Tim McMillan: We believe that the railroads carry many products that would fall in the flammable or in the dangerous goods category. Oil by rail is one of them. There are many specs of oil that are being carried, so again we think that when the railways are carrying multiple different products, they are best positioned to take responsibility for those actions.

Mr. Jeff Watson: I appreciate that. I am not sure many stakeholders, let alone the government, would agree with that position, which is why we have the bill in front of us today.

Mr. Boissonneault, you've raised a number of items in your presentation today. On the aspect of a training fund levy or set-aside, with respect to the levy that is considered in Bill C-52, are you asking the committee to establish that?

•(1615)

Mr. Paul Boissonneault: Through the emergency task force, as well as through consultation with various stakeholders, we are trying to find an appropriate mechanism to define where the standardized training should live and breathe. That is probably the biggest challenge that we are facing, without knowing the specific legalities of whether it is the role of government in putting in place a measure, or whether it is simply something that has to be worked out through industry stakeholders, together with our association, to find where this training money should live and breathe.

What I am presenting today is information for the committee that we have tried to look at mechanisms toward a stipend that would support a training fund that could be rolled out across Canada nationally to at least an awareness level, which would give basic information for all the firefighters across Canada. Where it can live and breathe is the biggest challenge to that.

Mr. Jeff Watson: You'll have to forgive me. I almost thought I was questioning a government official on that one. I need a clearer

answer. We'll have to consider this bill at clause-by-clause. Are you asking the committee to amend this bill to create some sort of a levy?

Mr. Paul Boissonneault: If that is the appropriate mechanism where it can be, then yes, I am asking the committee to look at that because what we have discussed and/or presented to government for a training fund in the past was deemed to be not the acceptable means, so we are trying to find a means. At the end of the day, the public safety issue, as well as the firefighters' safety, is our biggest [*Inaudible—Editor*] concern.

Mr. Jeff Watson: The stakeholders haven't agreed on what is a policy question for governments to decide, but you are asking the committee to prejudge when the stakeholders have no agreement on how much, how it would be dispersed, and how it would function. Okay, we'll take that as advice then, and probably advice to the government.

On the \$250 million limit, the minister was clear that it is not a limit; it is a \$250 million target that would be backstopped by a loan from the consolidated revenue fund, repayable by the reinstatement of the levy on those who own the commodity. Are you suggesting that this is not sufficient for covering any scenario with respect to an accident, or are you suggesting that we should...? I don't know what you are suggesting. Is that mechanism not sufficient in any scenario, including what happened in Lac-Mégantic?

Mr. Paul Boissonneault: Specifically in regard to what has been reported about Lac-Mégantic and the allocation of costs associated with that event, I would say that certainly when we talk about the seven situations of the releases from the derailments that took place in 2013, they certainly didn't reach that \$250 million limit, and that many of these would likely be under that value.

Mr. Jeff Watson: In fairness, you're speaking as if \$250 million is a cap, and it's not a cap.

Mr. Paul Boissonneault: Right.

Mr. Jeff Watson: Okay, but the mechanism that's in place, or that the bill itself puts in place, doesn't envision that as a cap of any sort. While the target for initial capitalization of the fund itself is \$250 million, there isn't a scenario where the fund wouldn't pay a cost that would exceed that.

The Chair: I'm going to have to cut you there, Mr. Watson.

Just before we go on, regarding Mr. Watson's first question, I want to clarify that with Mr. McMillan.

You said that the 200,000 barrels a day equated to 450 cars, if I remember right. Is that a 2015 figure?

Mr. Tim McMillan: No, that would be 2014, but we would be seeing incremental growth from there.

The Chair: Okay, thank you.

Mr. Tim McMillan: It wouldn't be a big jump.

The Chair: Thank you very much.

Mr. McColeman, welcome to the meeting. It's good to have you here.

Mr. Braid, you have seven minutes.

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

Thank you to all of our representatives and witnesses for being here this afternoon.

Ms. Saskiw, thank you for being here all the way from Alberta. Madam Mayor, thank you for all the work you've done on the various working groups and advisory committees. That's very helpful.

In your opening comments you indicated that you thought the new liability insurance level requirements contained in the bill, as well as the new compensation fund, are "an important step forward."

Could you just elaborate on your thoughts with respect to that?

• (1620)

Ms. Jenelle Saskiw: Like I said, this is a starting point for our work here for the legislation. We still have a lot of regulatory requirements that we have to work out, so this is a step forward. This is an ongoing issue that we have to deal with, understanding that a one-size-fits-all approach simply does not work in Canada. We're dealing with many factors so we have to take into consideration absolutely everything.

Mr. Peter Braid: Specifically with respect to the liability insurance levels and the special compensation fund, why are those so important for your municipality or any other one across the country?

Ms. Jenelle Saskiw: Again, we have to consider other products as well. We don't want it limited to the shipment of crude oil. Like I said, there are other factors that we have to consider and just move forward with that.

Mr. Peter Braid: Thank you for the update on the proximity guidelines. I think it was in the context of a discussion on the proximity guidelines that you suggested you didn't want a one-size-fits-all approach. Is that correct? And why is that important?

I would certainly agree with you, but tell me why not having a one-size-fits-all approach across the country with respect to proximity guidelines is important.

Ms. Jenelle Saskiw: Again, we just have so many issues. We're such a geographically diverse country. There are a lot of factors that we have to consider. We're dealing with a lot of remote areas; we're dealing with highly densely populated areas. There are so many factors. A concern of mine is even communication levels.

When we have some derailments in rural parts of the country, we may not even have the means to be able to communicate exactly what was on those trains with our first responders. That's a concern as well. I'm happy that it was addressed in the budget, that they will be looking at the broadband issues. Like I said, this is the reality of it. We don't have sufficient resources to just rubber-stamp it and say this is exactly what we're going to be dealing with. There are so many factors that we have to consider.

Mr. Peter Braid: With the new liability insurance requirements, the compensation fund, and the powers in the bill that the minister will now have, do you feel that communities will be in a better

position, that they'll be better protected, and that there'll be more safeguards? Do you feel that?

Ms. Jenelle Saskiw: It's a starting point. Again, we have to start someplace.

Mr. Peter Braid: Will you be better off with C-52?

Ms. Jenelle Saskiw: Yes, I think that we will be.

Mr. Peter Braid: Thank you.

I'm going to take a step back. The minister and the FCM struck an agreement a year or so ago with respect to the exchange of information relating to the transportation of dangerous goods, specifically for first responders.

Chief Boissonneault, are you pleased with that new arrangement? Is it working for you? Are you getting the information that you need as a first responder?

Mr. Paul Boissonneault: Yes.

That information exchange is one area that we were very, very pleased with. There are still some questions from some municipalities about the real-time information. The stance that we've always taken is that the information is a necessity for emergency planning so that we know what is coming through our municipality and we can prepare appropriately for that. If we knew that a train was coming in at noon specifically, we're not going to go park fire trucks or any other responding apparatus at crossing guards because we know that's coming through. The real-time information is not as important as it is for the emergency planning aspect. Certainly that is probably the most important piece that we've had.

Mr. Peter Braid: I think part of the new arrangement or communications protocol also recognizes that this information can't get into the wrong hands. That's why it goes to you—to first responders only—and that information can be safeguarded.

Do you agree with the importance of that?

Mr. Paul Boissonneault: Absolutely.

Obviously some specific security-based challenges have to be dealt with. Responders and defined emergency planners through the CAO of a municipality are certainly the right people to have that important documentation in place to ensure that the preparedness levels of their community meet or exceed the expectations of its residents.

• (1625)

Mr. Peter Braid: So some significant progress has been made in this area?

Mr. Paul Boissonneault: Very much so, on the information sharing.

Mr. Peter Braid: Excellent.

Thank you for your comments, your suggestions, and your proposal with respect to supporting specialized training.

I have a question or two on that. I presume that, again with a country as large as Canada with varying sizes of municipalities, some first responders in certain municipalities are better positioned than others to deal with these sorts of very difficult incidents.

Are there any best practice situations that we can turn to out there? Are any specific municipalities or first responders particularly well positioned or better trained?

Mr. Paul Boissonneault: There are certainly many examples.

I think what our association can provide as an example for a best practice is that we worked very closely with the Canadian Fertilizer Institute to develop an online training program specific to anhydrous ammonia.

We're not saying that crude oil is the only flammable liquid that requires additional training, but the way that the crude burned in Lac-Mégantic was by definition not how we thought it would. Through the fractioning process and then the shipping requirements, it burned hotter, with more volatility, and certainly in a more explosive way than what a fire chief—and I'm speaking on my behalf—would assume would come out of a tank car in the event of a derailment.

I think those kinds of best practice approaches are what we're talking about with an awareness level training program. Getting it to the grassroots level for as many fire departments—and we represent 35,000 through our association—is a starting point. It's certainly not the finish line, but at least it will give some very valuable information specifically in regard to the class 3 flammable liquid.

The Chair: Sorry, Mr. Braid, but you're out of time.

We have time for one more question here, Mr. Kellway.

Mr. Matthew Kellway (Beaches—East York, NDP): Thank you very much, Mr. Chair.

Thank you to the witnesses for coming today.

I wanted to make a point on the issue of the 200,000 barrels per day from CAPP producers. I understand that's just CAPP, and we asked the minister the other day how many barrels per day go by rail and I understand that that information is to be coming to the committee later. I just wanted to put the 200,000 in context, because the Estimates out there are much larger, in fact quintuple that number.

We had a letter not long ago from Mayor John Tory of Toronto and 17 councillors whose constituents back onto the CP Rail line going through Toronto. They are concerned about the safety of their constituents and proposing safety initiatives that could be undertaken by the government, but which haven't been undertaken yet. We've had the chance to talk about what would happen and how resourced small towns are in terms of the ability of volunteer firefighters to respond to an accident.

I'm wondering if FCM has put their mind to what it would look like in a very dense population like Toronto, Vancouver, or wherever we have an incident similar to Lac-Mégantic and whether you consider that your firefighters and first responders have the resources that will allow them to protect public safety and their own lives in such a scenario.

Mr. Daniel Rubinstein: Just very briefly, the situation in an urban area in terms of thinking about the municipal role is not that different from a rural area. Certainly municipal fire services in big cities have some capacity internally to train to a higher level than in a small town, but when you're talking about a large volume flammable liquid incident, the fact remains that municipalities are not mandated to deal with an issue of that scope. This is why we called for emergency response assistance plans for these products that bring in specialized assistance to any municipality regardless of their size to help in the event of an incident.

It's important to keep in mind the difference between training and the actual specialized response. All of our members need that assistance, and that's what the ERAP regulations and program help to do.

• (1630)

The Chair: Mr. Komarnicki, you have the last question. Please use your time wisely.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): With respect to smaller communities, are you satisfied with the legislation around getting paid for the costs of either firefighting or remedial work that has to be done? Is that something that you feel is appropriate in the bill? What are your thoughts about that? Have your members been experiencing any difficulties whatsoever in collecting payment?

You can both take it.

Mr. Paul Boissonneault: We are very satisfied that the liability falls on the polluter pays principle to ensure that the cost burden is not associated with the municipalities or specifically with the fire service budget for an incident of that nature. We feel that the bill does address that, very much so.

The Chair: You have 15 seconds, if you want to comment.

Ms. Jenelle Saskiw: I have to agree. We're happy that it's not being downloaded onto the backs of the municipalities. So we are very happy, thank you.

The Chair: Okay. Thank you very much.

We're going to have to break for the next half of our meeting, but thank you to all of you for being here.

• (1630)

(Pause)

• (1635)

The Chair: We will call our meeting back to order.

Ms. Barker, Ms. Frid, and Mr. Ballantyne, thanks for joining us in the room.

To Ms. Lai, thank you for joining us by video conference.

Can you hear me okay?

Ms. Patricia Lai (Co-founder, Safe Rail Communities): Yes, I can. Thank you.

The Chair: Okay, I can hear you well too. With that, I'm going to turn it over to you to start. You have ten minutes or less, please.

Ms. Patricia Lai (Co-founder, Safe Rail Communities): Thank you. Good afternoon, everyone. *Bonne après-midi*. Thank you for this opportunity.

Before I share our thoughts on Bill C-52, I'd like to tell you a bit about our organization.

Safe Rail Communities was created in the wake of the Lac-Mégantic rail disaster, which occurred in the early hours of July 6, 2013. Forty-seven people died a violent death that night. Why? They were too close to a rail line where crude oil tank cars derailed and exploded.

My neighbours and I live within metres of a rail line in the west end of Toronto in an area called The Junction. Our riding is bordered on three sides by rail. Trains are a part of our daily life. Their low rumble is our constant soundtrack. When we learned that the same lethal tank cars that derailed in Lac-Mégantic first travelled past the windows of our children's bedrooms as they slept, we realized that we needed to act.

We researched derailments and plotted their steady rise. We learned that tank cars carrying the same type of volatile crude oil that exploded in Lac-Mégantic were travelling past our homes in never before seen numbers. In 2014 it was 280 times the number of cars that travelled in 2009.

In March of 2014 Safe Rail Communities was born. We are a group of ordinary citizens who are concerned about dangerous goods being transported by rail. Our goal is to raise awareness on this issue and to press government and industry to take meaningful action. We share our knowledge and resources with others across Canada who live close to rail lines. We take every opportunity to publicly document our recommendations on this issue, which is why today I am pleased to share with you our group's thoughts on Bill C-52.

Although it has some promising elements, we feel that Bill C-52 could go further to ensure safety and accountability. Before I discuss what Safe Rail Communities would like to see added to Bill C-52, I would like to discuss six concerns that our group has identified within the current legislation.

Our first concern relates to liability insurance. Bill C-52 sets a minimum insurance requirement of \$1 billion for class 1 railways, but CN and CP already carry at least \$1 billion in liability insurance without a law telling them to do so. An accident on the scale of Lac-Mégantic would require liability insurance about six times this amount. This estimate of \$6 billion U.S. for a high-consequence event comes from the Pipeline and Hazardous Materials Safety Administration in its draft regulatory impact analysis.

Our group would instead recommend that class 1 railways carry unlimited liability to cover the full cost of a rail accident. This would put the focus squarely on prevention. It also fits with the polluter pays principle, which is the supposed basis for Bill C-52.

Our second concern with the bill concerns how this minimum insurance coverage is determined. Right now the amount of insurance needed is dictated by the total tonnage the railway carries in a year. However, the risk of accident is always in relation to a single event. This means a railway carrying only a few large loads a

year could have coverage that is drastically insufficient to cover the damage those few large loads could cause.

Our third concern is who has a say in deciding liability. Railways can avoid liability if they can establish, according to Bill C-52, that any other defence set out in the regulations applies. The federal cabinet is given power to decide these regulations. The cabinet's future decisions about what defences will be available to railways adds uncertainty to this legislation. It also provides the possibility of decisions that could undermine the effectiveness of Bill C-52.

Our fourth concern with the bill is that it restricts the ability to sue for environmental damages to the government. This means members of the public, whether an individual or group, will not be able to sue for environmental damages. Our concern is that even though both the federal and provincial governments have had the ability to sue for environmental damages for more than a decade, they have not done so. We wonder who will hold railways responsible for the damage they do to the environment.

● (1640)

The fifth point we'd like to make concerns the compensation fund that the bill proposes. Bill C-52 imposes a levy on the companies that ship dangerous goods by rail. The levies collected will be used to create a \$250 million compensation fund. But again, \$250 million is relatively small compared to the estimated cost of \$6 billion U.S. needed to compensate a high-consequence event. Moreover, there is likely no access to the compensation fund for environmental damages because of the priority given to other types of damages.

Our sixth and last point concerns railway safety inspectors. Bill C-52 authorizes inspectors to identify immediate risks and request any measure that would mitigate risk. We find this amendment to the Railway Safety Act unclear. We would like to see included in the bill an inspection schedule with specific criteria to determine risk and with specific corrective action.

These six deficiencies of Bill C-52 that I've just outlined for you are of great concern to us. In our view, a preventative approach that highlights meaningful action should be the focus of legislation covering railway safety and the transportation of dangerous goods. Prevention should be paramount, then mitigation.

I'd now like to share what we feel should be included in any legislation that addresses safe and accountable railways. First, there should be increased government regulation and enforcement. The rail disaster in Lac-Mégantic and subsequent fiery derailments have shown that the current safety management system, with its reliance on self-regulation, is inadequate.

Secondly, existing rail safety technologies such as positive train control, automated railcar monitoring, and automated track inspection should be implemented with robust standards.

Third, first responders should receive current information about any dangerous good travelling through their communities. In a rail disaster precious time is wasted confirming train manifests.

Our fourth recommendation also touches on the matter of transparency. Last summer's Bill C-31 included the repeal of sections of both the Railway Safety Act and the Transportation of Dangerous Goods Act. These sections provided the opportunity for Canadians and interested groups to review and comment on proposed regulation at the last stages of the regulation-making process. These sections should be reinstated.

Our fifth point is that crude oil can and should be stabilized and/or treated at the point of departure to decrease its volatility.

Our sixth point is that we would like to see effective tank car standards for crude oil. The current standard is the CPC-1232, which has been shown in the Lynchburg and Gogama derailments to be inadequate.

Finally, we believe that the speed of trains carrying dangerous goods should be monitored and enforced.

The safe transport by rail of dangerous goods, including crude oil, involves many factors, such as track condition, volatility, tank car integrity, and speed.

The Chair: You have one minute left.

Ms. Patricia Lai: We strongly feel that an independent risk analysis of all relevant factors could properly assess the safest way to manage all of these risks together and that the results of this analysis should be shared with the public.

We support our friends in Lac-Mégantic in their call for a public inquiry on the disaster, which will have its second anniversary this July. While the people of Lac-Mégantic wait for answers, how many more rail communities will have to go through this horrific and traumatizing experience before meaningful change occurs? Just this year Gogama has had two close calls within three weeks. What would a high-consequence derailment look like in a densely populated city like Toronto, Vancouver, or Montreal? Small or large, all rail communities are at risk.

We trust the government to protect us and what we find here is a broken business model in which industry profit not only puts Canadians at risk, but also leaves us paying the cost of industry calamity.

Safe Rail Communities has spent countless hours researching and writing and more hours knocking on doors and speaking to Canadians. We see and hear that Canadians are deeply concerned about this issue. We are calling for meaningful action and meaningful change to prevent further tragedy.

Thank you. Merci.

• (1645)

The Chair: Thank you very much.

We'll now move to Mr. Ballantyne from the Freight Management Association of Canada.

You have 10 minutes or less, sir.

Mr. Robert Ballantyne (President, Freight Management Association of Canada): Thank you very much, Mr. Chairman.

I appeared before this committee just about a year ago when it was talking about safety management systems in particular, and the safe and accountable rail act, of course, is a good follow-up to the work that's gone on over the past year.

The Freight Management Association has been around for 99 years representing the views of shippers. We advocate for our member companies regarding air freight, trucking, marine, and rail. Just as background, I am a member of the Transport Canada advisory committee on rail safety, representing the shipper community.

Before addressing Bill C-52 specifically, I'd like to offer a few general comments about transportation safety, and let me preface it by saying I don't work in the rail industry. We have a lot of conflict with the rail industry between the shipper community.

With that I would say the following: first, by any reasonable standard modern transportation in all modes in the western world is safe; second, as long as there is movement controlled by human beings there will be accidents; third, safety can never be taken for granted and vigilance can never be let down; and fourth, there is always room for improvement.

The Canadian transportation safety regime—that is, policy, laws, regulation, enforcement, accident investigation and practices—focuses on prevention of accidents, and this is as it should be.

The recent Lac-Mégantic derailment was a tragedy and the work by all stakeholders in both Canada and the U.S. to take actions to minimize the possibility of another such accident has been intense and thorough. The Transportation Safety Board has made its recommendations and the government has taken action in response. This includes, of course, Bill C-52.

I should point out that such accidents are extremely rare and that this needs to be considered in any actions the government takes. While there are derailments periodically—as there have been, and always will be—as the previous speaker mentioned, the last accident that came anywhere close to Lac-Mégantic in terms of its impact was the derailment of propane tank cars and other dangerous goods cars, including chlorine, on the Canadian Pacific Railway, in Mississauga on November 10, 1979. That's nearly 36 years ago. In that accident, no one was killed or injured. There was limited property damage, and about 250,000 people had to be evacuated for several days. Transport Canada and the railways learned a lot of lessons from Mississauga, and the result is that there has been no accident as severe as Mississauga on either of the two class 1 railways since that time.

The Transportation Safety Board is the scorekeeper with regard to accidents in aviation, marine, rail, and pipeline, and the statistical long-term trend in all modes is in the right direction. There are perturbations from time to time and there has been a little bit of an uptick in some of the modes in the last couple of years.

So looking at Bill C-52, we did provide some comments to the Transport Canada discussion paper that was issued last year, and there are a number of points we made to them, and I'll make them again today.

First, of basic and fundamental importance to the Canadian economy are the common carrier or level of service provisions, that is, sections 113 to 116 of the act. With only two class 1 railways in Canada, with many commodities that have no other practical transportation option, including a lot of dangerous commodities, it is imperative that this basic provision of Canadian law be maintained. Bill C-52 does maintain the level of service provisions and adds proposed subsection 113(2.1), which provides a mechanism for the railways to collect the levy for shippers of crude oil.

Second, and this is from the government discussion paper, the Transport Canada discussion paper: "A cornerstone of the Government's approach to liability and compensation regimes in other modes and sectors is the "polluter-pays" principle..."

FMA agrees with the government that this is a fundamental cornerstone of the third-party liability and compensation regime and is in line with long-standing legal principles that have been confirmed by the courts over time, and Bill C-52 appears to follow that principle.

Third, given the rarity of such major accidents and the ability of the class 1 railways to manage the aftermath of such accidents, and given the levels of third-party liability insurance, we understand that while the bill is only calling for a maximum of \$1 billion, my understanding—albeit I can't confirm this—is it's been reported that CN and CP have each been carrying about \$1.5-billion worth of liability insurance.

• (1650)

It's imperative that the bill should focus on the short-line railways, especially those that carry significant quantities of dangerous goods, especially inflammable goods.

Reinforcing this point, the safety record of the class 1 railways, their knowledge of handling dangerous goods, and their safety procedures and training activities make it less likely they will have an accident of Lac-Mégantic proportions. The thing to remember is that Lac-Mégantic was a runaway train. All the other derailments that have been talked about are ones where the train has been under power.

Fourth, shippers, especially those that produce and ship dangerous goods, carry appropriate amounts of insurance and are prepared to live by the polluter pays principle. If the shipper is negligent, the courts will assess the degree of negligence and assess damages accordingly.

Fifth, as noted in a Transport Canada discussion paper, issues of national competitiveness and the need to maintain rail service on

short lines for industries important to regional economies are factors that need to be considered in making any changes.

Some specific comments on Bill C-52 include the minimum liability insurance coverage. This is essentially the first line of defence for ensuring that valid claims resulting from a railway accident are paid. When dangerous goods are in the care of the railways, the first claim should be on the railways and Bill C-52, in my reading, confirms this.

Bill C-52 appears to have been sensitive to the balance that is required with regard to short lines and regional railways, which is that the insurance coverage should be high enough to address the risk, but not so high as to put the short lines out of business. The four levels of coverage proposed in schedule IV attempt to meet this balance, and proposed subsection 92(4) provides authorization for the Governor in Council to revise schedule IV, and, as more experience is gained with proposed levels, presumably the minister will be able to amend the schedule as required.

Item 4 of schedule IV is of concern. This is the one that requires railways in this category—essentially, CN and CP—to have minimum liability coverage of \$1 billion per occurrence. The Transport Canada discussion paper reports that "Large North American railways carry third party liability insurance coverage of up to \$1.5 billion each." It is understood that CN and CP have coverage in this range.

There is concern that, if the law requires only \$ 1 billion, the class 1 railway carriers may reduce their current level of coverage. FMA recommends that Transport Canada review this with CN and CP, and that Parliament amend item 4 of schedule IV as per recommendation from Transport Canada. In this connection, proposed section 152.7 limits the railway liability to the maximum liability insurance coverage. This would appear to potentially reduce the liability of CN and CP to \$1 billion each from their current level of \$1.5 billion.

Second, regarding the crude oil shipper finance supplementary fund, division VI.2, proposed subsection 153.4(1), liability and compensation in case of railway accidents involving designated goods, establishes a fund for accidents involving these designated goods. By proposed section 155.3, shippers of crude oil are required to pay a levy of \$1.65 per tonne until March 31 of next year.

The Chair: You have one minute left, please.

Mr. Robert Ballantyne: Thank you.

This appears to be appropriate and it looks as if there is provision for further changes, if necessary.

Third, the administrative monetary penalties, AMPS, section 177 of the act is amended by adding proposed subsections 177 (2.1) and 177(2.2), providing for penalties of up to \$100,000 per violation for failure to keep the agency apprised of changes and that are in violation and to remit the levies and to keep appropriate accounting records. FMA supports this.

Finally, concerning proposed amendments to the Railway Safety Act, it is preferable—and what I say will be controversial—to leave safety management systems and the detailed management of safety to the railway managers and employees. However, replacing section 32.4 with the new subsections 32.4(3.2) and 32.4(3.4), and adding a new section 32.01 gives the minister authority to order the railways to take “necessary corrective measures”. This is reasonable, especially with regard to short lines, and FMA supports this recommendation.

That's all I have to say.

• (1655)

The Chair: Thank you very much.

Ms. Frid, I believe you're presenting on behalf of the Canadian Transportation Agency.

Mrs. Nina Frid (Director General, Dispute Resolution Branch, Canadian Transportation Agency): Yes. Thank you very much, Mr. Chair.

[Translation]

Mr. Chair, honourable members of the committee, thank you for inviting us to appear before you on the subject of Bill C-52, An Act to amend the Canada Transportation Act and the Railway Safety Act.

I am Nina Frid, from the Canadian Transportation Agency, where I am responsible for the Dispute Resolution Branch. My colleague, Liz Barker, is the agency's general council.

[English]

With your permission, I would like to briefly outline the role of the agency.

[Translation]

The agency is a federal administrative tribunal and economic regulator with jurisdiction over a broad range of air, rail and marine matters. As well, the agency is responsible for removing undue obstacles to the mobility of persons with disabilities within the federal transportation network.

[English]

The Canada Transportation Act is the agency's enabling statute. It outlines the extent of the agency's authority and jurisdiction, as well as the agency's role in administering the act. As a tribunal, the agency resolves a range of disputes, by facilitation, mediation, arbitration, and adjudication. With respect to our role in rail transportation, the agency mandate applies to railway companies under federal jurisdiction. There are currently 30 active railways under federal jurisdiction, including class ones and short lines.

Pursuant to the Canada Transportation Act, the agency resolves disputes pertaining to level of service; road and utility crossings; noise and vibration; interswitching; and disputes between a public passenger service provider and a railway company. The agency issues certificates of fitness to railway companies, approves railway line construction, establishes interswitching rights, determines the maximum revenue entitlement for the movement of western grain, and determines the net salvage value of railway lines under the transfer and discontinuance provisions.

When we appeared before your committee last year as part of your study on rail safety, we spoke about the agency's consultation on third-party liability insurance. As you may recall, in the summer of 2013, we announced our intent to review the approach to determining the adequacy of railway third-party liability insurance, as our immediate response to the tragic derailment in Lac-Mégantic.

At that time, a year ago, we informed the committee that our consultation was an information-gathering exercise designed to serve as a basis for the work that our colleagues at Transport Canada conducted as part of their broad consultation on the policy aspects of liability and compensation. I'd like to tell you that the policy is not within the legislative authority of the agency under the Canada Transportation Act.

As part of our consultations, the agency explored a number of issues that helped provide information, and, in some instances, inform the work that happened to develop the bill that is before you. Specifically, we consulted on whether there should be additional or different third-party liability insurance requirements related to the transportation of certain commodities like dangerous goods, whether minimum coverage requirements for liability insurance should be established, and whether administrative monetary penalties or other mechanisms would be appropriate for non-compliance.

The agency received comments from over 25 organizations, including a wide range of stakeholders: railways, both class ones and short lines; the insurance industry; shippers; and municipal associations. I would like to thank our stakeholders for their thoughtful comments, including the Federation of Canadian Municipalities; the Canadian Association of Petroleum Producers; the Freight Management Association of Canada—and many others you saw today who provided their comments to us—as well as Marsh Canada, which advised us; and the Railway Association of Canada, which provided comments on behalf of the rail industry.

• (1700)

We heard from our stakeholders that they support the introduction of minimum requirements of insurance. They support the different requirements for various commodities, especially dangerous goods, and the use of the administrative monetary penalties as an effective compliance tool in our compliance toolbox.

Bill C-52, the safe and accountable rail act, clarifies a number of sections of the Canada Transportation Act and updates the aspects that were covered by the agency regulations for third-party liability insurance coverage, and introduces new requirements for compliance and enforcement. This bill, in our view, will strengthen the liability and compensation regime for federally regulated railways by establishing minimum insurance levels for railway companies and a supplementary shipper-financed compensation fund to cover damages resulting from railway accidents involving the transportation of certain dangerous goods.

Under the new regime introduced in this bill, the agency will assign legislated minimum levels of insurance to railways based on the type and volume of commodities they carry, including dangerous goods. Minimum insurance levels would vary by type and quantity of crude oil or dangerous goods, as specified in schedule IV of the bill.

To address concerns that some short lines may have difficulty absorbing the costs of minimum insurance requirements, we would say that they will be phased in over time. Initial insurance requirements corresponding to half of the full amount specified in schedule IV will come into effect in 12 months, and then the full amount a year after, while class ones will be requiring \$1 billion.

To ensure that liability is shared, as designed in the new regime, the bill also makes changes to section 137 of the Canada Transportation Act to clarify that railways will not be able to impose their third-party liability on shippers unless it is done by means of a contract signed by both parties. We understood from our consultations that this is a very important point for the shippers.

Bill C-52 also establishes more robust oversight and enforcement mechanisms to ensure that railways comply with the requirements of the new regime. Railways will continue to be obligated to notify the agency of any changes to their operation that may affect their insurance coverage. Under the new regime, the agency will be empowered to make inquiries on our own motion to determine compliance and as before, or as currently, the agency will be able to suspend or cancel the certificate of fitness of a railway that fails to comply with insurance requirements.

As well, the bill introduces administrative monetary penalties up to a maximum of \$100,000 for contravention of the requirements. Like our stakeholders we believe that it is an effective mechanism to ensure compliance without having to cancel or suspend railway operations, because that is what the shippers want and it supports the economic activity.

In terms of the measures introduced under the Railway Safety Act, this is a completely new mandate for the agency. According to the proposed amendments, a province or a municipality that believes the fire was a result of railway operations can apply to the agency for reimbursement of costs incurred in responding to the fire. This amendment gives the agency new authority, and the agency will work very hard to develop the process and procedure and the steps and guidance for the parties so they can take advantage of these provisions, and do it in a transparent and predictable way.

These applications will be adjudicated by the agency. It will be a two-step process, where, in the first step, the agency would have to determine whether the fire was caused by a railway operation. Once that is established, the agency will review the claim of the cost that's presented and establish what costs are properly assigned to the railway, and then order the railway to reimburse the municipality or province.

• (1705)

This certainly will be a bit of challenge for us since this is a new mandate. As we have done with the previous Bill C-52, and after Bill C-30, we'll do our best to make sure that these measures are available and clear.

In conclusion, I would like to thank you very much for the opportunity.

My colleague and I would be pleased to answer your questions.

The Chair: Thank you very much.

I want to remind members that the clerk informed me that the bells will start at 5:15 for votes in the House, so we're not going to get through as much as we had liked.

Ms. Nash, you can start with the questions.

You have seven minutes, please.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thanks very much, Mr. Chair.

Thank you to all the witnesses for your presentations.

My question is for Ms. Lai. As your member of Parliament we know each other. I want to congratulate you on your presentation today. It was very clear and specific in your critique of the bill and very specific in terms of your recommendations. I want to thank you for the many months and countless volunteer hours you have put into becoming an expert in rail issues as they affect our local community.

Ms. Lai is absolutely right when she says that the trains are right there. People almost feel that they can reach out of their bedroom windows and touch them they're so close. You've been so specific and we have heard some of the other witnesses speak positively of the bill. Mr. Ballantyne, for example, said that while we had a little uptick in some areas, he's generally happy with the bill. The shippers seem to be happy with it.

Can I ask you, Ms. Lai, to channel the voices of the community that you have spoken with and express for the committee their comments, their views, and what they're telling you about the importance of the critiques you're making today and the recommendations you are making on rail safety?

Ms. Patricia Lai: Thanks, Peggy.

Absolutely, the people who we have spoken with—and these are not just people in the GTA, but people we've reached out to across the country—are terrified. There are small communities who have real fears because they feel they probably will not be equipped if anything happens. The residents in Gogama are extremely upset and extremely afraid, as that second derailment was very close to the town. I know that right now they're still dealing with it, just as the residents of Lac Mégantic are. It's so important for our representatives to understand the real fear and concern that is out there. Safe Rail Communities is not anti-rail, we're not anti-oil, and certainly we understand the economic importance of the goods that are shipped by rail.

What we are asking for is not unreasonable, as a lot of the technologies I have spoken about already exist. I think people across the country are supporting our asks and supporting our recommendations. They would like to convey to their elected members that this is a real issue for them.

Ms. Peggy Nash: Thank you.

I have one minute left.

Many of the issues that you raise are certainly feasible and they're technologically possible. In terms of things unlimited liability other countries are already doing this.

Can you give us your view as to the urgency of the committee amending this bill—it does take some steps forward—in light of Lac Mégantic to get the best possible outcome for this bill?

• (1710)

Ms. Patricia Lai: I think some of the recommendations might take a little more examination and review. Everything that we have put forward is possible, is rational, and is reasonable. Definitely for things like the issues around environmental damages, we want to make sure that people who are affected by any kind of rail disaster will have the opportunity to make sure they have coverage. As Mr. Ballantyne mentioned before, I don't think anyone believes that derailments will not happen. Given the increase in volume of dangerous goods shipped across the country, I think people feel it is a real possibility and it could happen anywhere. They would like to feel for sure that our elected numbers are taking every possible precaution to ensure that it doesn't happen, and if it does happen, and if it should happen, that we are protected and we at least feel confident that our elected representatives are doing everything they can to ensure that.

The Chair: Mr. Sullivan, you have a little over two minutes.

Mr. Mike Sullivan (York South—Weston, NDP): To the CTA, I would point out that CN and CP both carry much more insurance now than this bill would force them to carry, so essentially we're giving them a break with this bill of about half of the cost of their insurance bill. And MMA, if they were to be insured under this bill, would have \$125 million—\$62.5 million this year and \$125 million eventually. It's nowhere near what the cost of the derailment was, really. So this suggestion that we are somehow improving things seems rather vague, at best.

Is it possible to have unlimited liability? Is that something other jurisdictions have done? Why would we walk away from an unlimited liability system to a system that actually gives the big railroads a break on their costs?

Mrs. Nina Frid: I cannot pretend to be an expert on that subject. I know that you have heard from the insurance industry directly, and based on what they presented and what we heard from Marsh Canada, there is a certain way that the railway insurance is underwritten. We also understand that the current level that is underwritten for class 1 railroads, not only in Canada but across North America, is pretty much the maximum that is available.

Mr. Mike Sullivan: Is that about \$1.5 billion U.S.? That's what we understand.

Mrs. Nina Frid: I cannot give the exact number because this is confidential at the moment. The railways claim this information as confidential and the agency is obligated to keep it so.

Mr. Mike Sullivan: Mr. Ballantyne, you suggested that these collisions are a rarity. Perhaps in dense urban areas they are rarities, but in fact with spills in Aliceville, Casselton, and in West Virginia, and in Gogama, and in Saskatchewan, there has been a 50-fold increase since 2012 in the amount of crude oil that has spilled as a result of these incidents.

Mr. Ballantyne, would you agree with me that it's no longer a rarity, given the volume of crude oil that is now being transported, and the volatility of the oil that's being transported?

The Chair: Very briefly, Mr. Ballantyne.

Mr. Robert Ballantyne: The simple answer is no, I wouldn't agree with you.

The Chair: Okay, thank you.

Ms. Nash, at the start you talked about how in the homes of Ms. Lai and a number of her group you could almost reach out and touch the trains. Simply for clarification, were the homes there first, or the rail line?

Ms. Peggy Nash: These homes have been there for many decades.

The Chair: Were they there before the rail line?

Ms. Peggy Nash: I don't know that, but I can tell you that what has changed, Mr. Chair, is the substances that are being carried and the volume of substances—

The Chair: I think you got that out. I'm only trying to figure out which was first.

Ms. Peggy Nash: Yes, I think people thought it was things like grain, milk and things being carried in the tank cars.

The Chair: That's fine.

Mr. McGuinty, you have until the bells start ringing.

Mr. David McGuinty: Thanks, Mr. Chair.

Before I go to questions, I do want to thank Ms. Lai for her presentation. It was very helpful, very thoughtful. Thank you very much for your contribution, and thank you for all the work you put into this. It has been very helpful, so thank you for your comments. I may come back to you in a second.

Ms. Frid, perhaps I could turn to you for a second. You were very forthright and honest in your assessment of the CTA's new challenge. You alluded to the fact that the agency currently has a quasi-judicial tribunal role to play. Is that correct? In that tribunal work you're doing now, to what extent are you dealing with pecuniary or financial applications for settlements, for costs and so on? Are you dealing with those now?

•(1715)

Mrs. Nina Frid: No, Mr. McGuinty, we are not dealing with claims for damages. We have not done that. We are experts in railway costing. When I mentioned that we produce interswitching rates, they are cost-based. We establish a maximum revenue entitlement that is also very much tied to the railway costs, so we are experts in costing. We also do cost apportionment on crossing applications, but we have never done this type of consideration of claims, which up until now have been dealt with through the courts.

Mr. David McGuinty: This is basically an assignment of a form of tort law in litigation from the independent judiciary to a regulatory agency. Is that right? Most people haven't seen this before in Canada. We are trying to figure out why this is a positive step. Do you have the resources to deal with this? Do you have the financial, legal, and expertise resources to deal with these claims?

Mrs. Nina Frid: On the question of tort law, I'd better refer to our general counsel. She is a lawyer, and she has a legal branch under her command.

Mrs. Liz Barker (General Counsel, Legal Services Branch, Canadian Transportation Agency): Yes, I would agree with Mr. McGuinty's characterization of this.

Mr. David McGuinty: It's holus-bolus. It is not just an amendment but a whole new form of mandate being assigned to the CTA, which is very different from the four corners of the statute within which you now operate. You are going to be basically fielding

claims from municipalities and provinces, which are going to go to you with quantum. The City of Toronto or Montreal might say, "We have evaluated that the damage is half a billion dollars." How are you going to handle that? You are not judges. The [*Inaudible—Editor*] of evidence don't apply.

Mrs. Liz Barker: We are assessing costs. We are determining whether the fires are as a result of railway operations, and then it's an assessment of costs. It is on a much grander scale. The agency currently has the power to assess costs in its proceedings, and it does that on an exceptional basis a couple of times a year. Obviously, this is on a different scale. It is not determining the reasonableness of the costs. It is determining the eligibility of the costs, which will be as a result of a consideration of whether the costs were incurred in responding to the fire. I think there are some legal issues there that the agency will work out in the early days of its consideration of these cases.

The Chair: The bells are going.

Mr. David McGuinty: The bells are ringing.

The Chair: The bells are ringing, believe it not.

Ms. Lai, thank you for joining us by video conference. Ms. Barker, Ms. Frid, Mr. Ballantyne, thank you very much for being here and participating in our study. Thank you very much.

The meeting is adjourned.

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