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Chair

The Honourable Judy A. Sgro

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• (1535)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call to order the 14th meeting of the Standing Committee on Transport, Infrastructure and Communities in this first session of the 42nd Parliament.

I welcome our witnesses as we continue our report on railway safety, which we're hoping to table before the House rises. I'd say "this summer", but I'm not sure it's summer yet.

With us today from the Canadian Transportation Agency are Fred Gaspar, chief compliance officer, and Randall Meades, chief strategy officer.

Gentlemen, I'll turn the floor over to you.

Mr. Fred Gaspar (Chief Compliance Officer, Canadian Transportation Agency): Thank you, Madam Chair.

Honourable members of the committee, thank you for once again inviting the agency to appear before you.

My name is Fred Gaspar. I am the chief compliance officer for the CTA. With me today is Randall Meades, our chief strategy officer, as you've heard.

We are representing our chair and CEO, Scott Streiner, who unfortunately could not be here today as he's travelling outside the country, but he did ask us to advise you that he looks forward to appearing before this committee at the next possible opportunity.

[Translation]

I'd like to start by offering a brief overview of our organization and its mandate.

The Canadian Transportation Agency is an independent body. As a federal quasi-judicial tribunal and regulator, we have jurisdiction over a broad range of air, rail and marine matters.

The Agency has essentially three core mandates. Its first mandate is to help keep the national transportation system running efficiently and smoothly. The second mandate is to protect the human rights of travellers with disabilities by ensuring that the transportation system is fully accessible. And the third mandate is consumer protection for air travellers.

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.

The Agency shares responsibility for certain provisions in the Railway Relocation and Crossing Act and the Railway Safety Act, focused mainly on resolving disputes and cost recovery.

The Canadian Transportation Agency does not handle matters of safety, which is the responsibility of the Transportation Safety Board and Transport Canada.

And where Transport Canada is the primary source of public policy advice to the Minister of Transport, the Agency works at arm's length to regulate industry and to resolve disputes.

[English]

When it comes to rail transportation, the agency's mandate applies to railway companies under federal jurisdiction. There are currently 32 such active railways, including class 1s and short-line railways.

The agency plays an important role in helping to resolve disputes as well. We have expertise in alternative dispute resolution, such as mediation and arbitration. In our experience, these methods can be faster and less expensive, producing a resolution that benefits all sides.

Although the agency has a number of rail-related responsibilities, today I'd like to focus on four elements of our rail mandate that perhaps may be of most interest to this committee.

The first element relates to the certificate of fitness. If a railway company would like to construct or operate a freight or passenger railway under federal jurisdiction, they must apply to the agency for a certificate of fitness. The agency ensures that railway companies have the level of insurance that they need to begin to operate and to continue to operate in Canada.

The Safe and Accountable Rail Act requires appropriate levels of insurance coverage based on the type and amount of dangerous goods that railways carry each year. The agency is engaging currently with railway companies so that they can be prepared to meet the new insurance requirements once the act comes into effect. We are fully ready to administer these requirements to ensure that they maintain at all times the applicable minimum liability coverage requirements.

[Translation]

The Agency's second role is related to cost recovery for rail-related fires. Under the Railway Safety Act, provincial or municipal governments may apply to the Agency to recover costs reasonably incurred in responding to a fire when the applicant believes that the fire resulted from a railway company's railway operations. To date, we have not received any applications under the fire provisions.

[English]

The third mandate is related to the relocation of railway lines or the rerouting of railway traffic in urban areas in situations where a railway company and the provincial or municipal government cannot agree. However, these powers may be used only when certain criteria are met, including a determination by the agency that any such relocation or rerouting would occur at no net cost to the railway company. Importantly, the agency has not been approached under this act since the 1980s.

[Translation]

The fourth rail-related mandate deals with railway crossings and cost apportionment.

The construction or reconstruction of a crossing can be negotiated between a railway company and other parties. If the parties cannot come to an agreement, the parties can ask the Agency to resolve the dispute. The Agency also has a role to play when parties cannot agree on how to apportion the costs of constructing, altering or operating a railway work. If the parties cannot agree on the allocation of costs, either party may refer the matter to the Agency, before, during or after construction or alteration of the railway work, to resolve the dispute.

[English]

As you can see, the agency plays a variety of roles within the rail transportation system. It's a mandate we take seriously and execute proudly every day on behalf of Canadians.

With that, Madam Chair, thank you.

We look forward to your questions.

The Chair: Thank you very much.

Any further comments?

All right.

Ms. Watts, for six minutes.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): Thank you very much. I appreciate your being here.

There are a couple of questions just perhaps for clarification. You were talking about relocation and rerouting of rail lines and dispute resolution and that there have to be certain criteria within the relocation or rerouting. Can you describe a bit of what that looks like?

Mr. Fred Gaspar: First of all, under the Railway Relocation and Crossing Act one of the first first triggers is that the parties are required to negotiate and submit an accepted plan. It's important, as I think all members would agree, that they come together and come up

with a transportation plan to reflect how the entirety of the region is going to be affected by the relocation.

Once that plan is submitted, we obviously look at it from a number of perspectives, not the least of which is to ensure it does actually meet the requirements that are being shown, and we also do tests to see that it is done in a manner that is of net cost to the railway. The act also provides an opportunity for federal funding for the act if such an application has been made and accepted.

• (1540)

Ms. Dianne L. Watts: You said that it has not been used since 1980. That seems like quite some time ago, during which I know there have been significant movements of population into urban areas. I would expect that you would have some significant issues as a result, in terms of the interface between the rail lines and the urban containment boundaries within that.

Why has it not been used since 1980?

Mr. Fred Gaspar: I should clarify: I think it was in 1987.

This is conjecture, and I'm always hesitant to get into that realm, but I suspect that it has something to do with the financial implications, obviously.

One of the standards is that, effectively the railway has to be made whole, and it's pretty hard to arrive at that resolution, first and foremost. Obviously, we can't speak definitively as to why it hasn't been used, but I suspect that's probably it.

Ms. Dianne L. Watts: What would incent a rail line to move or relocate? There would be no incentive for them to do it because there's no mechanism in place to do that.

Mr. Fred Gaspar: Madam Chair, that gets to the heart of what makes this so difficult to do, because there has to be an arrival of interests for all parties at the same time. There are circumstances whereby it would be efficient and effective for the railway to consider doing that, whereby there might be operational gains to be considered. The act does permit, for instance, that such benefits might be factored into the overall determination of the economics of the proposal.

If a railway, by diverting a few kilometres out of town, could pick up 20 or 30 kilometres of speed on their route, just as an example, this might be something that might incent them to act, but obviously their interests have to come together at the same time with those of the municipality—and, admittedly, that's a difficult thing to align.

Ms. Dianne L. Watts: What then is the point of having it in place if you can never reach that benchmark?

Mr. Fred Gaspar: I think parliamentarians are best positioned to speak to the merits of the act. It is what it is.

Ms. Dianne L. Watts: Okay.

In terms of dispute resolution, if you had a rail company that was not complying with certain aspects of the regulations and it was not being dealt with in a proper fashion, would that be something that you would have the resolution with, perhaps, a level of government and the rail line?

Mr. Fred Gaspar: I should start by apologizing. My colleague, Doug Smith, who is our chief dispute resolutions officer, is not here today. But we do have a system and the mechanism in place to facilitate that under this act, and a number of other provisions. We always try to encourage negotiated solutions. That's why we've recently started to diversify to look into mediation services as well, because, obviously—I think members would agree—those solutions that are arrived at by the parties directly are ultimately much more sustainable. But if need be, we can make a pronouncement on our own.

In the case of the Railway Relocation and Crossing Act, if one party felt that they were being treated unfairly by the other or that the numbers actually were not correct, then certainly we could make a decision accordingly. But it's best when the parties do it themselves.

Ms. Dianne L. Watts: Right. And you'd have to have two or three willing parties to come to that.

My next question is in regard to what you were saying about the insurance coverage for the rail lines being in place, that you would ensure they had adequate insurance. So if there was a derailment or anything to do with hazardous goods or anything like that, you would make sure that was in place?

Mr. Fred Gaspar: As part of the issuance of the certificate of fitness, which is effectively the operating licence, we look at the insurance. We first do a certificate of insurance. Under the Safe and Accountable Rail Act the government has now prescribed a set definition of what constitutes adequate insurance levels, depending on volumes and types of materials being carried.

We are currently in discussions with all affected parties to ensure that we will be compliant once the law comes into effect.

Ms. Dianne L. Watts: When is the law coming into effect?

Mr. Fred Gaspar: Parliament will decide.

Ms. Dianne L. Watts: Does this deal not just with Canadian rail lines, but also railway companies that are coming up from the U.S.?

• (1545)

Mr. Fred Gaspar: Yes, if you're operating on a federally regulated line in Canada.

Ms. Dianne L. Watts: It's all those measures. Okay.

The Chair: Mr. Hardie, for six minutes.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): I'll continue from where Ms. Watts was headed on this. I thank you both for being here.

Earlier in our process we heard very specific information about the Burlington Northern and Santa Fe line, which comes up through the border with British Columbia and Washington state and then proceeds through to downtown Vancouver. What we heard very specifically was that there were some issues with a small community called Crescent Beach where the train would basically close access to that neighbourhood, which is quite substantial in size, for extended periods of time.

A number of questions arise out of this. There is, I understand, a requirement for crews to break a train if it blocks an intersection for more than five minutes. Is that your understanding?

Mr. Fred Gaspar: Yes, and importantly, these are regulations that are administered by Transport Canada. I think you're referring to the shunting of rail cars.

Mr. Ken Hardie: No, I'm not. This is actually just a train on its way through that stops for whatever reason. It's not really your issue at all. I'll leave that for them.

When we do come, then, to railway crossings, you mentioned that you get involved with the change in location of a railway crossing. Would you also get involved where there was a reasonable argument for a grade-separated crossing?

Mr. Fred Gaspar: Yes. Amongst its other duties, the agency is responsible for resolving crossing issues between the federally regulated companies and other interested parties as well. This is related to matters as diverse as infrastructure, relating to level crossings versus grade crossing separations.

The interested parties could be landowners, utility companies, public passenger services, and we do have a role to adjudicate such disputes.

Mr. Ken Hardie: When it comes to track rerouting, you mentioned that ideally, interested parties will get together and negotiate something, and then if necessary, your agency can step in and help resolve any differences.

What could be done in a situation where one of the two parties, either say a municipality or a railway, has no interest in exploring the topic, but the other one is really interested in it?

Mr. Fred Gaspar: I think when such parties can't reach a formal agreement, then certainly we can step in. If they can make a case, as a quasi-judicial tribunal, that the numbers are sound, that it is of no net loss to the railway company.... And again, this is just an example; I'm not suggesting that one party or the other is most likely to be in a position of not agreeing. But if one party, in the view of the other party, is not acting in good faith, and that first party can make a case that, in fact, the numbers work, that the proposal is reasonable, that the transportation plan that's required under the RRCA is an appropriate one, then certainly we would have the authority to step in on that case.

Mr. Ken Hardie: I presume that the requirement that there be no net loss to the railway looks just at dollars in-dollars out, and not necessarily at some of the other issues that might be non-monetary but could be seen as a benefit.

Mr. Fred Gaspar: I hesitate to define it too much, because, quite frankly, this is art not science, and so we do want to allow for the maximum latitude of discussion with regard to someone making and building a case. To that end, certainly one of the provisions in the act, for instance, is an allowance for the cost to be recouped over time. I think it's 15 years. I might have to get back to you on that to confirm. There is methodology by which non-direct costs can be recognized.

Mr. Ken Hardie: I see. How long has this no net loss requirement been in place?

A voice: I don't know.

Mr. Randall Meades (Chief Strategy Officer, Canadian Transportation Agency): It's been there from the outset. It's not a new provision.

Mr. Ken Hardie: It's been around for awhile.

I have one final question, and if there's time left over, I'll defer to my colleague here for a couple of quick ones. With regard to the certificate of fitness, are you noticing specific issues with short-line railroads meeting those requirements?

Mr. Fred Gaspar: I wonder if, perhaps, you might be referring more to the certificate of insurance, which is a feed-in to the certificate of fitness. There's no doubt that the insurance market is pretty constrained, and there are only a few in the market of underwriters internationally, and the international field that supports this kind of insurance is fairly constrained. It's intuitive that small short-line railways would be more effective, but I think that's why the Safe and Accountable Rail Act set thresholds with regard to volumes and with regard to the nature of goods being carried, such that they can make choices accordingly to ensure that they have a business proposition that is marketable and profitable.

•(1550)

Mr. Ken Hardie: I think, just as a flag, with the number of incidents coming up for which there will be heavy draws on insurance funds, we might see that capacity really start to dry up in a big way. That may be something that policy-makers need to keep an eye on.

At this point I will defer to my colleague Mr. Sikand.

The Chair: You have 40 seconds, Mr. Sikand. Be very fast, please.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): No problem.

In terms of the dispute resolution, can you give us some numbers to work with in terms of how many disputes actually arise?

Mr. Fred Gaspar: With all due respect, Madam Chair, could I come back to the committee with that? To be perfectly frank, I would be guessing at this point. I will definitely come back.

The Chair: We would appreciate that very much.

Mr. Randall Meades: Madam Chair, I would add that we have an annual report that will be published later on this year, with all that data and statistics in it. It may be worthwhile just waiting until then, if that's agreeable.

The Chair: That would be later on in the year.

I think that, from the committee's perspective, we are trying to finalize a report, albeit short, on railway safety. It would be helpful if we had that information to look at just how many disputes there actually are.

If you could get it to us in the next 48 hours, if that's the best you can do, we'd appreciate that.

Mr. Fred Gaspar: Sure.

Mr. Randall Meades: We'd be more than happy to accommodate.

The Chair: Thank you very much.

Ms. Duncan, go ahead for six minutes.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thanks for appearing, gentlemen. Can you tell me whom you would see as your client?

Mr. Fred Gaspar: We're accountable, through the legislation we administer, the Canada Transportation Act. To that end, as a quasi-judicial economic regulator, we are accountable to Parliament, and we administer the acts as prescribed by law.

Ms. Linda Duncan: In our conversation before we convened here, I was asking you some questions about certificates of operation. I was a little surprised to discover—and maybe you can correct this on the record—that a certificate of operation is issued only once to a rail company. Is that correct?

Mr. Fred Gaspar: There are actually a number of certificates. I just want to clarify that there's the railway operating certificate, which is issued by Transport Canada, and that's the mechanism that gets more into questions of safety. Then, as a concurrent piece, we do the certificate of fitness, which really looks more at the economic viability, the underlying business case. We certainly coordinate with Transport Canada to ensure that they are issued, I guess, in conjunction with each other.

In terms of how often we do it, we do issue it once. However, we do review the certificate of insurance yearly. We also have provisions to monitor whether we receive a complaint or if, on inspection, we find that there are deficiencies, and we have provisions to suspend or cancel.

Ms. Linda Duncan: I reviewed the report by the Transportation Safety Board on the MMA disaster at Lac-Mégantic. In the long list of problems with MMA, despite the fact that they were given an exemption, one of them was a lack of investment in infrastructure maintenance. Is that not a factor you would look at under your certification?

Mr. Fred Gaspar: If that observation is related to the infrastructure of the rail line and it's a rail line they don't own, when we look at a certificate of fitness, we look at the railway's own business model. But again, these things aren't done in isolation from any other considerations. So, obviously Transport Canada, when looking at the railway operator certificate, would take any such concerns into account.

Ms. Linda Duncan: It has been widely reported over the last several years that there has been a thousandfold increase in rail traffic of dangerous cargo, including petroleum products. Have you at any time reconsidered, or are you in the process of reconsidering the insurance levels for this kind of activity by the major rail lines?

Mr. Fred Gaspar: No, the insurance levels are prescribed by Parliament through the Safe and Accountable Rail Act, and so what we're doing is we are preparing to be able to enforce those. We've been in discussions for a number of months with different stakeholders, both in the insurance field and with the railways themselves, to discuss how we're going to do the monitoring and the compliance. At the same time, we are also preparing to ensure that when Parliament prescribes a coming-into-effect date, Canadians can be assured that all railways will be properly insured under the provisions of SARA.

Ms. Linda Duncan: Do you also confer with municipalities in deciding what's appropriate insurance?

Mr. Fred Gaspar: No, the insurance levels are prescribed by the Safe and Accountable Rail Act.

Ms. Linda Duncan: That's interesting.

In rail relocation, what factors do you consider in making a determination on whether you should be even entering into what you call negotiations?

•(1555)

Mr. Fred Gaspar: There's a pre-application stage, before the application is submitted. That's really where we expect most of the work to be done, because that's where a lot of the issues get addressed through the development of an accepted plan. The accepted plan is defined as being something that has to be supported by the province and all the municipalities within that urban area. The intention of that plan is to really identify how the transportation network of that entire region are going to properly function after the proposed relocation. A lot of the issues, frankly, that are of primary relevance are going to be dealt with through the formation of that plan.

When it comes to us in the application stage, our primary focus is taking a look at whether or not the no net loss provisions for the railway... And we test to ensure that the accepted plan is in fact an appropriate plan and has been accepted by all parties.

Ms. Linda Duncan: One of the things that you look at is the assessing of the shared costs of rail crossings. Is that correct?

Mr. Fred Gaspar: Yes.

Ms. Linda Duncan: And in doing so and deciding how they would be portioned, do you give consideration to the amount of dangerous cargo transported by the company, and proportionately then impose a greater proportion of the costs on the company?

Mr. Fred Gaspar: No, the real triggers are really what's causing the relocation. For instance, if the municipality wishes to build a new road network, and if that's the primary trigger for the relocation, then the act prescribes.... I'll have to get back to you with the precise details

Oh, I do have it here. My apologies.

They're primarily due to road development. The road authority pays 85% of the cost and the railway company pays 15%. Inversely, if it's primarily due to railway redevelopment, the road authority would pay 15% and the railway company 85%.

It's really a function of looking at the operations and the underlying economics of the proposal. We don't make value

judgments through the context of the rail crossing act as to the nature of the goods being carried. That's dealt with through the insurance provisions. They either have or don't have authority to carry the goods they are proposing to carry, and they either do or don't have the level of insurance required. That's a separate exercise.

The Chair: Thank you very much, Ms. Duncan.

Mr. Hardie, Mr. Sikand.

Mr. Ken Hardie: Has any railroad had its certificate of fitness suspended?

Mr. Fred Gaspar: I'm sure they have. I have to apologize to the committee, as I'll have to get back to you on that. I've only been with the agency for five weeks, so I'm still in the process of digesting the history, but we'll definitely get back with complete numbers for you

Mr. Ken Hardie: It would be interesting to have numbers and basically the reasons cited for the withdrawal, just so that we get a sense of what's really important to your board.

In terms of fitness, fitness will obviously have some specific criteria attached to it as you assess who gets the certificate, or what they need to get it, but operating practices are changing. Trains are longer, they're heavier, and faster, in some cases. Would there be changes to what constitutes fitness according to the operating realities of the various lines?

Mr. Fred Gaspar: The considerations you raise are really more dealt with by Transport Canada through their railway operators' certificate, because it's mostly operational, taking a look at it from a safety perspective. Ours is more from the economic viability perspective, to assure Canadians that once a service comes into service, it's going to be able to carry on business, that it's properly financed. The certificate of fitness is primarily a financial fitness test. We do it in coordination with Transport Canada to ensure that the parties are advancing one instrument that the other is also advancing.

Mr. Ken Hardie: At the risk of stating the obvious, regarding my earlier question about certificates being withdrawn, that would obviously apply to short-line railroads, wouldn't it?

Mr. Fred Gaspar: I'm sorry, I missed the....

Mr. Ken Hardie: My earlier question of how many incidents involved withdrawal of fitness certificates would apply to short-line railroads.

Mr. Fred Gaspar: Okay, probably so.

Mr. Ken Hardie: It mentions in our notes here that you do have some responsibility under the Railway Safety Act. Can you give us some details of what those responsibilities are?

Mr. Fred Gaspar: Section 23 of the Railway Safety Act, for instance, provides new authorities to the agency with respect to fire. That was a subamendment to that legislation from the Safe and Accountable Rail Act. It essentially provides for municipalities and localities to make the case that if they find that railway operations are the primary cause of a fire, any reasonable costs they can show to have been incurred in combatting that fire.... It authorizes us to make that determination and issue an order accordingly.

Mr. Ken Hardie: Is that basically it?

• (1600)

Mr. Fred Gaspar: No. The dispute adjudication rules also apply with regard to the Railway Safety Act. All the requirements in the Railway Safety Act are captured by our dispute adjudication rules, so it allows parties to come to us to resolve any disputes that are addressed.

Mr. Ken Hardie: Mr. Sikand would like to ask a question.

Mr. Gagan Sikand: You just touched upon the cost recovery of a fire.

I have a document in front of me that states that there actually haven't been any applications under the fire provisions. Could you please expand on this and maybe clarify?

Mr. Fred Gaspar: That's correct.

Number one, it's important to understand that those are relatively new provisions that have come with the passage of the Safe and Accountable Rail Act just under a year ago. Certainly since that time, we have yet to receive any applications under that provision.

Mr. Gagan Sikand: That's the only question I had.

The Chair: Now to Mr. Iacono.

Mr. Angelo Iacono (Alfred-Pellan, Lib.): We are presently looking at how to improve rail safety. In a perfect world, what recommendations would you like to see implemented?

Mr. Fred Gaspar: I trust that committee members will appreciate that it's really not in our purview to make recommendations in that regard.

That said, what we do through our annual report is to publish what our operations have been. I think that what you'll see with regard to how we handle disputes, and also with regard to the issuance of certificates of fitness, is that our primary focus is on the viability of the industry, on the service to Canadians, including grain farmers' access to fair rail. We're not in a position to be making recommendations on safety, since that's not in our primary purview.

Mr. Sean Fraser (Central Nova, Lib.): Is there much time left?

The Chair: We've got a minute and 20 seconds.

Mr. Sean Fraser: Perfect.

With respect to railway crossings, in your remarks you indicated that when a dispute over cost arises, it can be referred to you before, during, or after construction. Is there ever a delay in actually performing work on a crossing before it gets to the dispute resolution process?

Mr. Fred Gaspar: Do you mean if works are delayed because of the dispute?

Mr. Sean Fraser: Yes.

Mr. Fred Gaspar: I'd have to get back to you on that. Maybe our dispute resolutions branch would have some information on that, but I don't know.

Mr. Randall Meades: In terms of railway crossings, we do publish a guideline that's updated annually that provides a breakdown between municipalities, provinces, and railway companies.

That has been very useful in keeping the disputes out of the agency and having the parties come to an agreement.

Mr. Sean Fraser: If you're going to follow up, can you find out whether the economics of a project has ever caused people to not implement safety measures at railway crossings?

Mr. Fred Gaspar: Okay.

Mr. Sean Fraser: I expect I'm out of time.

The Chair: Yes, you are.

We're doing very well with our time, we still have five minutes left. Are there any further questions on this side? If not, I'll go over to Ms. Block.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): I join my colleagues in welcoming you here today.

I have a number of questions. I will focus them on railway relocation and the railway crossings and cost apportionment.

Did you provide a submission to the Emerson review?

Mr. Randall Meades: No.

Mrs. Kelly Block: Would that be because of the role you play within...?

Mr. Randall Meades: I should have elaborated on that, as opposed to just saying no. It has to do with the fact that we have an opportunity through our annual report to provide our advice to the minister. That's the route the agency typically takes.

Mrs. Kelly Block: My second question—albeit it's not related to the two points I said I wanted to talk about—is about common carrier obligations. Would any part of what your agency does be linked to that issue?

• (1605)

Mr. Randall Meades: Part and parcel of what we do is under the Canada Transportation Act. There is a common carrier provision, and it's our responsibility to ensure that the railways comply with that provision.

Mrs. Kelly Block: In your comments you spoke about railway relocation being the third mandate of your organization. You spoke to the fact that you can order a railway company to do such things as remove railway structures, build new facilities, and stop operating. But then you went on to say, "However, these powers may be used only when certain criteria are met, including a determination by the agency that any such relocation or rerouting would occur at no net cost to the railway company.

What other criteria are taken into consideration and why? You know that we're in the middle of this railway study and hope to be going to Lac-Mégantic. Certainly, we understand that communities have been built around railways, but the fact of railways running through communities is now a huge issue that's creating some angst. Why is that a priority criterion when it comes to the relocation of railways?

Mr. Fred Gaspar: Madam Chair, the best way to put it is that it's really more of an attempt to balance interests. It's certainly not a priority from our perspective. What we're trying to do at the same time is enabling the operation of the railway in a manner that serves the broad subset of public interests, of which safety is one, and is managed by Transport Canada, and obviously is one of the most importance and interest. At the same time, we work to ensure that it's done in an effective manner and that the goods move and get to market. The intention is to encourage the parties to negotiate those matters ahead of time.

In terms of the specific things that we can mandate a party or a railway to do, it's more of an example. We try not to predefine the types of interventions or investments or decommissionings that we can see happen. We want the parties to get together and come up with an accepted plan. Importantly, that's where the time provisions become helpful, to encourage the consultants to work on behalf of the municipalities and the province, and the consultants and the railways to come to terms on what serves the broader, longer-term interest of all parties.

Mrs. Kelly Block: You don't want to predetermine those conversations, and I think I heard you say that the best agreement is the one that the two parties arrive at themselves. What basic criteria would you provide to the parties when they are looking at negotiating a railway relocation?

Mr. Fred Gaspar: As Randy indicated, a guide is published. We can certainly get you copies. The intention is to ensure that the municipalities and the provinces understand and take account of the operational and the economic impacts of what's being proposed and, obviously, from the railways' perspective, that they properly understand what constitutes an appropriate set of movements through a dense urban area. Members would probably agree that, given time, parties acting in good faith are likely to come up with good solutions. Where these things tend to fail is when short-term decisions are needed in short order, and the business cycle doesn't permit it. As I said, this piece of legislation hasn't been accessed since 1987.

Mrs. Kelly Block: That's very interesting.

Under the heading "Railway crossings and cost apportionment", in your opening remarks you also speak to the fact that "the construction or reconstruction of a crossing can be negotiated between a railway company and other parties". Who would those other parties be? I assume they include a municipality, or...? What other parties might be involved in that negotiation?

Mr. Randall Meades: It's the province, the municipality, primarily, and the railway company itself.

Mr. Fred Gaspar: It's intended to capture the road authority. Sometimes the road authority isn't necessarily the local government, for instance.

The Chair: Thank you both very much for providing us with that information.

I believe Mr. Hardie wanted to raise a point of order.

Mr. Ken Hardie: You've referenced your annual reports a few times, and they sound like they're pretty rich in information. Your advice to ministers, etc., would be useful for us to us at this time.

I'd like to ask if you could submit your last five annual reports, so we can also get an idea of trends and some of the things that you've been reporting—

• (1610)

Mr. Randall Meades: Absolutely.

Mr. Ken Hardie: —as documents for our consideration.

Mr. Randall Meades: They're available online as well.

Mr. Ken Hardie: Good. Thank you.

The Chair: Thank you both very much.

We will suspend to allow the other witnesses to come to the table.

• (1610)

————— (Pause) —————

• (1610)

The Chair: We will resume committee business.

To Mr. Laporte, Ms. Fox, and Mr. Jang, thank you very much for coming today as we move forward on this important railway study.

Mrs. Fox, the floor is yours.

Mrs. Kathy Fox (Chair, Transportation Safety Board of Canada): Thank you very much, Madam Chair, and members of the committee. I want to thank you for inviting the Transportation Safety Board of Canada to appear today.

I bring with me two colleagues who bring a wealth of experience. To my right is Mr. Jean Laporte, chief operating officer, and to my left is Mr. Kirby Jang, the director of rail and pipeline investigations.

Given the shorter period of time scheduled for today's appearance, we thought it would be more efficient to submit our original, longer, preliminary remarks that deal with who we are and what we do in advance. I hope that's been distributed.

What I'd like to do now is briefly outline some updates.

The most powerful tool that the Transportation Safety Board of Canada has to advance transportation safety is through our recommendations to regulators and the industry in significant cases where we've identified a serious systemic risk that is not being adequately mitigated.

These recommendations are our highest level of communication and they carry significant weight. Under the CTAISB Act, the relevant minister has 90 days to respond as to if and how the department intends to address it.

[Translation]

Since it was established in 1990, the Transportation Safety Board has published 144 recommendations to improve rail safety. The TSB has not lost sight of any of them. We assess the initial responses and follow up. We also re-assess every year until we feel enough progress has been made that the risk has either been eliminated or else substantially reduced.

[English]

It may take time, but over the years we have a good track record of success. Of these 144 rail recommendations, the responses to 126, or almost 88%, have been assessed by the board as being fully satisfactory.

We currently have 18 outstanding rail recommendations requiring action by the regulator and the industry. We've recently completed and published our annual reassessments of most of these. These touch on everything from fencing along railways to reduce opportunities for trespassing, to the implementation of physical defences to mitigate against human error and following signal indications, and, of course, those coming out of our Lac Mégantic investigation, to name a few.

However, sometimes it takes Transport Canada a very long time to implement our recommendations. For example, in 2001, the board issued a recommendation to Transport Canada to "expedite the promulgation of new grade crossing regulations", something the department had already been working on for over 10 years at that point. It wasn't until late 2014 that the new grade crossing regulations were implemented.

• (1615)

[Translation]

That's why, a few years ago, the TSB produced a safety watchlist, highlighting those issue we feel pose the greatest risk to Canada's transportation system.

[English]

Currently there are four rail issues on the TSB watch-list. These are railway crossing safety, the transportation of flammable liquids by rail, following railway signal indications, and on-board voice and video recorders.

There's also a fifth issue that affects not just rail, but also other transportation modes, including marine and aviation, and that is the issue of safety management and regulatory oversight.

Our last watch-list was published in 2014 and we'll be preparing an update before the end of 2016.

In closing, we at the TSB appreciate your focus on rail safety and appreciate being asked here today to speak with you. We hope that our presence will help inform your work and, in particular, we would respectfully suggest that there are two areas that this committee could address. First, is the need for an expedited regulatory process when it comes to implementing safety-related regulations. Second, it could follow up to ensure that Transport Canada is fully addressing the regulatory oversight issues that were raised by the Auditor General and by our own investigations, particularly in the aftermath of the Lac-Mégantic tragedy.

Thank you.

I'll now take questions.

The Chair: Thank you very much.

We start with Ms. Block.

Mrs. Kelly Block: I'd like to welcome all of you here today. I'm looking forward to the questions that my colleagues will be asking you.

You noted in your remarks that the fifth issue on your watch-list relates to rail safety and safety management systems and regulatory oversight. Can you expand on what your particular concerns are and what the solutions might be?

Mrs. Kathy Fox: As I indicated, the issue of safety management systems and regulatory oversight is a multi-modal one, but given the focus here, I will focus on rail safety.

One of the things we've identified through our investigations in the past is that even when railway companies have a safety management system, that system may not be effective at identifying and addressing the risks in their operation. That was certainly one of our findings in Lac-Mégantic. If the company is not effective through its own safety management system at identifying these risks and mitigating them, then it falls back to the regulator, in our view, to identify those aspects of the operation and take action that will be effective at bringing a company back either into compliance with the regulations or to being more effective in addressing the risks.

Mrs. Kelly Block: Have you observed any differences in the safety climate between a short-line and a main-line railway?

Mrs. Kathy Fox: I can't pick out any one particular one. Certainly the larger class 1 railways would typically have more infrastructure internally to support their safety management system, but in our belief, any commercial operator, regardless of mode, should have a means to manage their safety risks. That requires some sort of institutionalized and documented formal process for identifying hazards and mitigating risks. That said, I can't say that we've seen a specific difference between the two through our investigations.

Mrs. Kelly Block: In either your third or fourth point on the watch-list, you also raised the question of the on-board tape and video recordings. Can you explain that a little further? That is something we are focused on in this study.

Mrs. Kathy Fox: In the air modes and marine modes of transportation, many operators are required to have on-board voice recordings. There's not yet a requirement for video recordings, but some operators are putting them in. That's not a requirement in the rail mode. There's no requirement for either voice or video, and the TSB has made recommendations in the past that both types of recordings be available.

From our perspective, it's absolutely essential to finding out what happened and why it happened. In some cases, we don't have a live crew. An example would be the VIA 92 derailment in Burlington, where the three crew members were all tragically killed. We did our best to identify why it happened, but without a crew and voice or video recordings to find out what was going on, it was very difficult for us.

So there's that aspect. It certainly has proven to be extremely beneficial for accident investigation. But beyond that, Madam Chair, we also believe that the use of voice and video recordings in all modes of transportation, and particularly in this case in rail, can go a long way to helping railway companies identify hazards in their operations and take steps before an accident occurs, provided it is used in the context of a proactive non-punitive safety management system.

• (1620)

Mrs. Kelly Block: Okay. Thank you.

We heard earlier from Transport Canada that they receive risk assessments from railways after significant changes take place in their operations, and we heard that it is the railways, not Transport Canada, that determine what is considered to be a significant change in their operations. Is this reactive method a concern at all for the TSB?

Mrs. Kathy Fox: We've definitely seen in a number of our investigations over the years that there are sometimes weaknesses in the risk assessments that are done by railway companies. Either they may not identify the hazard, or they may identify it and not take appropriate mitigation. This predates, certainly, Lac-Mégantic; there are other reports where we've identified this.

I think the evolution to a mature safety management system and a mature risk management process, while it may not be perfect, does take time, and it does take learning—unfortunately, from some bad experiences—but hopefully the system will become mature over time and will be more effective than it has been to date in some cases.

The Chair: Mr. Iacono.

Mr. Angelo Iacono: When the TSB investigates an accident, no other federal department except DND and the RCMP may investigate for the purpose of making findings as to the causes that contributed to the accident. If one of these agencies investigates an accident, does that put the TSB on the sidelines? Who leads the investigation? Do the RCMP and DND have the expertise to investigate that the TSB has?

Mrs. Kathy Fox: In terms of your last question, I don't think we're in a position to address whether they have the resource or the expertise.

What I can tell you is that if there's an air accident, because that's really the only overlap with either of those agencies, we will more than likely do the investigation. In terms of those agencies, we will collaborate with any investigation that they may have ongoing for their own internal purposes, because they obviously want to be able to find out, to some extent, what went wrong. We will undertake that investigation. We'll collaborate with those agencies, but at the end of the day, it's our investigation.

In the case of a military accident, we don't get involved unless there is some civilian component.

Mr. Laporte.

Mr. Jean Laporte (Chief Operating Officer, Transportation Safety Board of Canada): I can add that we have memorandums of understanding with those organizations that clarify the coordination of activities and how we interact in terms of the actual site, the evidence, and the interviewing of witnesses. All those things are predefined in those memorandums.

Mr. Angelo Iacono: In 2014 Ontario was the province where the most crossing accidents occurred, comprising 24% of all crossing accidents, which was unchanged from the five-year average. Alberta had the second-highest total, with 22% of crossing accidents, compared to 24% for the five-year average. Those two provinces were followed by Saskatchewan with 18%, Quebec and British Columbia with 12% each, and Manitoba, with 9% of crossing accidents in Canada.

If we have a national system with national safety rules, why are we seeing such regional disparity?

• (1625)

Mrs. Kathy Fox: It's very difficult to give a general answer to that question without looking at the specifics, because there are thousands of railway crossings in Canada.

Some of them, about a third of them, are controlled crossings with gates, bells, and whistles. Many of them are what we call “passive” crossings. I would really have to drill down, look at each one for the statistics, and see where those accidents occurred—whether they were in major municipalities or on rural roads—before I would generalize.

Railway crossing safety is something that we have identified on our watch-list. Originally, the issue was that there were no grade crossings regulations. There were guidelines out there for municipalities, road authorities, and railway companies to use. We were very pleased when Transport Canada implemented the new grade crossings regulations in 2014.

Over the next several years, under those regulations, all of the crossings need to be reassessed to make sure they meet the new grade crossings regulations and that they're as safe as they can be. Certainly, if there are issues there, we would hope that they would be addressed by the road authority, the railway, and Transport Canada, which oversees it.

Did you want to add anything, Kirby?

Mr. Kirby Jang (Director, Investigations Rail and Pipeline, Transportation Safety Board of Canada): I think that's a good summary. It is actually very difficult to generalize about crossing safety in specific locations. We look at the general trend. Over the past 10 years, there has been a slight decrease. Certainly, that's not the answer for many of the provinces that are still showing high rates of accidents.

Mr. Angelo Iacono: Thank you.

I'll be sharing my time with Gagan.

Mr. Gagan Sikand: Why do we leave it up to the municipalities to ask for the upgrades to the dangerous railway crossings? Why doesn't the TSB do it themselves?

Mrs. Kathy Fox: Our mandate is to investigate occurrences and identify causes and contributing factors to accidents, as well as underlying safety deficiencies. Our role, therefore, is to make recommendations, and over the years we have made a number of recommendations with respect to crossing safety. Most recently, in Ottawa, as part of our investigation into the fatal crash of an OC Transpo bus with VIA Rail, we recommended that Transport provide explicit guidance on when grade separation should be provided. That's part of the problem: the more opportunity there is for vehicles and trains to meet at a level-grade crossing, the more risk you have. We also made a specific recommendation to the City of Ottawa to review conditions at three specific crossings. Under the regulations, assessments fall within the mandate of the road authorities, the railway companies, and Transport Canada. It's not our mandate to go out and assess each individual crossing. In the course of an investigation, however, we certainly identify deficiencies in specific crossings, and we would expect safety action to be taken as a result of that.

The Chair: Thank you.

Ms. Duncan.

Ms. Linda Duncan: Thank you, Madam Chair, and thank you, Mrs. Fox, for being here. We've all been waiting for your testimony with bated breath. We really appreciate the work that you've been doing over the years.

The inspectors who testified some time back recommended that the power to issue a direction be extended to the Transportation Safety Board. Some of this arises from their consternation about the gap between the recommendations for investigations by the Transportation Safety Board and any action by the department.

Should TSB have some limited power of direction where there is a need for an immediate response?

Mrs. Kathy Fox: The best model that's been adopted, not only in Canada but in other developed countries, is to have an independent accident investigator—and on our part, we are totally independent of Transport Canada—who identifies safety deficiencies, makes recommendations, and provides arguments for change. We don't make prescriptive recommendations. If we were to become involved in prescribing solutions, this might have unintended consequences. We could be put in a conflict of interest down the road.

We have been very successful to date, particularly in the rail mode, where 88% of our recommendations since 1990 have been implemented. The responses have been judged as fully satisfactory. We now have 18 that we are continuing to push, through our watch-list and our annual reassessment of recommendations, and we're confident that in time they will be implemented. Our concern is how long it takes to get them implemented.

• (1630)

Ms. Linda Duncan: I'm not sure that the communities are happy to sit and wait for the response.

In your investigation into Lac-Mégantic, you identified an unbelievable list of violations by MMA, including runaway train, safety deficiencies in training, oversight, operational practices, lack of consultation with employees in doing risk assessments, problems managing equipment, problems with the remote control, issues with rules compliance, issues with fatigue management, and lack of investment in infrastructure and maintenance.

I'm wondering if you are finding a pattern of problems where Transport Canada allows exemptions that lead to incidents. This seems to be the case in Lac-Mégantic, where there was an exemption regarding having two employees on the line. Have you seen a pattern that you think would warrant looking into the power to grant exemptions?

Mrs. Kathy Fox: There may be reasons for flexibility in applying the regulations. From our perspective, you always have to look at the safety. We've seen weaknesses in the risk assessments done by the companies or the regulator that have contributed to accidents in the past. It might be too restrictive to say there can never be an exemption, but I think they have to be dealt with carefully to make sure that safety isn't compromised.

Ms. Linda Duncan: It certainly is in auditing a sector. I've worked with industrial sectors for a long time, and I've never seen such blatant powers of exemption. The Auditor General, in his 2013 report, raised a good number concerns about failings in the department's inspection regime, such as poor follow-up inspections to verify compliance, failed enforcement action, and a lack of enforcement training.

Your job is to investigate the incident and, presumably, the actions by the rail company. However, I noted that in the Wabamun incident, which I was directly affected by, while there inspections of the rail, it was determined in the end that some problems, such as defects in rail, couldn't be indicated without more careful inspection. I'm wondering what recommendations going forward... Do you think there has been sufficient response to the incident at Wabamun—and there were two more after that—with the allowance for using second hand or refurbished rail in repairing rail lines, particularly along waterways?

Mrs. Kathy Fox: What I can say is that we have noted some areas with respect to rail infrastructure with testing by using ultrasound technology. It can have some blind spots depending on the condition of the rail. I know that the railway industry is investing quite heavily in new technology to improve rail track structure, since about 39% of our rail derailments on main tracks are attributed to track infrastructure issues. It's something we look at carefully whenever there's a derailment to see how often it was inspected and how it was inspected. In about nine of our 23 ongoing recommendations, we're looking specifically at that aspect.

Ms. Linda Duncan: This is probably not a fair question to put to you, but given that there may be deficiencies in the efficacy of the detection of track defects, but in some cases, should there be rail relocations if you can't provide the assurance, particularly where there's dangerous cargo, and heavy cargo, and long trains going along these lines? Given that we don't know for sure that the inspections are catching the defects, should we be looking to other solutions to make sure that we don't have disasters?

Mrs. Kathy Fox: I want to emphasize there have been a lot of technology improvements in rail inspections over the years. We certainly look at that. I don't want to conflate those issues with the issues about rerouting, because they can replace rail, and do replace rail quite regularly. Even if railway tracks were rerouted, you still have the basic issues, but now somewhere else.

• (1635)

The Chair: Mr. Fraser.

Mr. Sean Fraser: You noted during your remarks, Ms. Fox, that 88% of these recommendations had been actioned, which seems like a very impressive figure, quite frankly. Some of the numbers I was reviewing indicated that despite the successful implementations of the recommendations, accidents still seem to be on the rise. I'm using somewhat outdated numbers here, but it seems that in 2014, there were 174 accidents involving dangerous goods, which is up from the five-year average of 131. The statistics are similar when you look at the number of serious injuries in a number of different categories.

What I'm trying to reconcile is why accidents and incidents are on the rise when, seemingly, the rate of implementation is good. Is there any context you can provide on that?

Mrs. Kathy Fox: When we look at the rail accidents overall, there were 1,200 in 2015, down 3% from the year before, and up 8% from the five-year average. Most of these accidents, or roughly 62%, are on non-main tracks. They're in yards, and they have a much lower risk than on main tracks where the speeds are higher and the consequences potentially more extensive.

While we're generally pleased with the progress that's been made on our recommendations, the fact is that five of our watch-list issues out of eight touch on rail safety. There are still a number of outstanding risks, notably with the transportation of flammable liquids, and we have at least four outstanding recommendations from Lac-Mégantic that would go a long way to reducing those risks. We have the issue of following signal indications, where we've had a number of accidents when a signal to slow down or stop was misperceived or misinterpreted, leading to a derailment or a collision. There's still quite a bit of work to be done there. We mentioned railway crossing safety, where there's still work to be done as well.

Those account for, I guess, the proportion of the accidents... outstanding. I certainly wouldn't want to give you the impression that we're sitting back in any way and saying that things are fine. There are still a number of issues that need to be addressed.

Mr. Sean Fraser: Thank you.

I don't have that impression; I'm only seeking further information.

On the issue of following the signal indicators, when you come up with these watch-list items, do you have recommendations on how best to overcome them?

Mrs. Kathy Fox: Yes. In fact, all of our watch-list issues are based on outstanding recommendations, investigation reports, and other types of safety communications such as safety advisory letters. A number of accidents have happened over the years. The last, most notable one was the VIA 92 derailment near Burlington, in which, we believe, the signals were misinterpreted or misperceived.

We've made two recommendations in the last ten years. One was to increase the number of backup safety defences to reduce the chance of a misperception of a signal. The railway industry did adopt some measures, but they were primarily administrative measures, new rules. That isn't sufficient.

After the Burlington accident, we made another recommendation, which was for physical fail-safe defences that will actually stop or slow the train if a locomotive engineer doesn't respond appropriately to a signal. These systems have existed for many years in the United States. The United States is also moving forward with what's called positive train control, which will have the same effect. We haven't moved forward with that in Canada, and that's why we've assessed Transport's response to that recommendation as being only partially satisfactory. Definitely, more needs to be done to slow or stop a train, to make sure it follows the signal indication and is not entirely dependant on a human.

Mr. Sean Fraser: On these technological advances that seem to be available but are not yet implemented—and perhaps this question is better put to Transport Canada—is there push-back from industry due to the cost of implementing a system like that?

Mrs. Kathy Fox: That is perhaps one of the factors. In the case of the Canadian railways now that are aware of this recommendation, because they operate across the border and because there will be positive train control being implemented in the U.S. in the next few years, they want to make sure that whatever system they're going to implement in Canada is going to be compatible since they cross the border. That may explain, to some extent, the timing of their investments. This is a significant technological investment. We still believe solutions are available. Some companies in Canada may be experimenting with some of those now. The longer we wait, the more risk there will be in the system.

• (1640)

Mr. Sean Fraser: On a similar but somewhat different line of questioning, I want to probe the area of whether passenger and freight have different rates of accidents. When I reviewed the stats, it seemed as though they did. Maybe I'm misinterpreting them.

Is there a difference in the rate of railway safety incidents involving passenger trains and freight trains, and if so, why?

Mrs. Kathy Fox: With respect to rail accidents, in 2015, 34% involved freight trains, 5% involved passenger trains, and roughly 62%, the remainder, involved accidents on non-main tracks, primarily yards and switching areas. Again, I can't give you a simple answer to the question. There are certainly lots of freight trains, so you'd have to compare the volume of freight trains travelling across the country against the number of passenger trains. That would have an impact on those situations.

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: My old insurance days suggest that what we're dealing with is exposure: more trains and longer trains create more opportunities for things to happen.

A theme that's been running through my mind as we've heard from the various witnesses is that there seems to be an imbalance between the safety management system approach and the regulatory approach to maintaining safety. We can look at something like operator fatigue. The management of that has been incorporated in safety management systems, and in fact relegated to collective bargaining in some cases. We heard from some of the bargaining units that they would like to see regulations come back to deal with that, because there are distortions that contribute to crew fatigue and therefore to the risk of accidents.

I use that as an example to ask whether, from your point of view, we have the right balance between safety management systems that rely on risk assessments, which you've already indicated could be shaky, and regulation that could be very prescriptive but could be prescriptive on the side of safety.

Mrs. Kathy Fox: When safety management systems were implemented—and they've been implemented in rail, marine, and aviation in Canada—they were never ever intended to replace regulation. They were always intended to be an additional layer of oversight within a company because, at the end of the day, you can never have a regulation for every possible situation, and you can never have an inspector overseeing every possible action. At the end of the day, the companies must be responsible for identifying hazards

and managing their operational risks, but you need a strong, effective regulator when a company can't do that or doesn't want to do that.

It's not a question of a safety management system or regulation; it's really how they work together. Ideally, a company has an effective way of managing its risks. The regulator is there to oversee and make sure that is doing it, that there is at least a common baseline of regulation that applies to everybody, and that they all work together.

With respect to fatigue in particular, we see fatigue as a hazard in any 24-7 transportation system. We always investigate for it. When we identify it and identify it as a contributing factor, we say that in our reports. There are fatigue regulations that apply to the rail industry. They may need to be revised and updated, but they do have some. At the end of the day, it's also up to companies and bargaining agents to work together and not to allow scheduling practices into collective agreements that are counterproductive from a human fatigue perspective.

Mr. Ken Hardie: In that case, again, I'm just looking at the issue of balance. Safety management systems, in themselves, give the operators a chance to do that assessment. They should know their operation better than anybody.

What we've heard is discomfort, perhaps, over the resources that Transport Canada has, and how it allocates them between auditing safety management systems and actually getting out and inspecting.

Are you comfortable with that balance?

• (1645)

Mrs. Kathy Fox: That's actually part of our watch-list issue, which is multi-modal. That is, all operators should be required to have formal safety management processes, and the regulator has to have a balanced approach to safety. If you see safety management on a continuum, there are some operators who may just have the minimum necessary to meet regulations, and there are others who are very proactive. The system of regulatory oversight has to take into consideration that spectrum of operators, and maybe focus more on inspections for compliance for those operators who have demonstrated that they're not capable of, or are not as effective at, managing their risks, and more audits for those who have demonstrated that they have a mature safety management system.

Absolutely, there has to be a balance between inspections and audits. We've seen definite evidence that it's not there in all modes.

Mr. Ken Hardie: I notice that in your watch-list, most of the calls to action are focused on Transport Canada and not on individual railroads.

Mrs. Kathy Fox: Yes, we have made recommendations to individual operators in the past. At the end of the day, most of the regulations come from Transport Canada. Even in the railway industry, where the rules may be developed by the railway industry, they still have to be approved by Transport Canada.

We recognize that Transport has to work with industry. Industry can play a role, and it often can take steps without waiting for regulations to correct safety issues.

Mr. Ken Hardie: When it comes down to your watch-list and the list of things that remain to be done, most of the focus appears to be on Transport Canada.

In getting back to risk assessments, let's face it, you can know your organization perhaps a little too well and overlook risks. Is there a role, perhaps, for independent risk assessments to be done of railroads?

Mrs. Kathy Fox: I'm not sure how that would work. Certainly, there's value in that. Many companies will bring in third-party auditors to take an outside look, but then there's also the role of Transport Canada in doing that.

What we've seen is that where companies are journeying along that continuum of maturity toward effective safety management, they may need to bring in outside expertise to help them build on their capacity to do effective risk assessments.

The Chair: Thank you very much, Ms. Fox.

Mr. Berthold.

[*Translation*]

Mr. Luc Berthold (Mégantic—L'Érable, CPC): Thank you, Madam Chair.

Thank you very much for being here. I have a lot of questions for you, but we don't have a lot of time, unfortunately. You can appreciate that, as the member for the Lac-Mégantic region, I have a lot to discuss with you.

First of all, I want to discuss credibility. I noted during your presentation that your organization's credibility is very important. In Lac-Mégantic, we are having trouble trusting all rail safety authorities.

Further to the analysis of the recommendations made with regard to the Lac-Mégantic tragedy, has the Transportation Safety Board considered reaching out to the community to report on the follow-up to the recommendations and the responses received?

Mrs. Kathy Fox: Further to our recommendations, we did contact the City of Lac-Mégantic. In our annual report last year, we put together the recommendations and communications regarding safety at Lac-Mégantic, since we had promised city representatives to keep them informed of the follow-up to our recommendations and the progress made by the department.

Mr. Luc Berthold: Among the recommendations in the report, the response on four of them was assessed as "satisfactory intent". The term "satisfactory intent" does not mean much to the people I represent.

Can you explain what satisfactory intent means for the people who read that in the follow-up to the recommendations?

Mrs. Kathy Fox: When the department responds to one of our recommendations, we assess the response to see if there is a plan, timelines. We also have to see if the plan implemented will actually address the reported deficiency. If so, the response is assessed as "satisfactory intent", which means that, if the plan is implemented, it will address the deficiency and the risks we had identified.

Quite often, if we find progress is too slow, we change this rating. Two years ago, for example, we informed the department that we were no longer prepared to wait years. After a certain amount of time, we reduce the rating to "unsatisfactory intent". We did this for a number of recommendations, simply because it was taking too long.

• (1650)

Mr. Luc Berthold: Would it be possible to give us the priority of interventions in order to help the government act quickly and resolve the problems? What would be the order of priority of the recommendations you made to the government regarding Lac-Mégantic?

Mrs. Kathy Fox: Actually, there are four remaining recommendations relating to the Lac-Mégantic accident. I cannot say one is more important than the other.

First of all, tank cars transporting flammable liquids, such as crude oil, must be stronger. We know that regulations are in effect, but we are concerned about the timelines because we might have to wait until 2025 before all the deficient cars are withdrawn.

The second recommendation pertains to risk analysis. We are waiting to see if this will indeed be effective.

The third group of recommendations pertains to prevention and ways of preventing runaway cars.

The fourth recommendations pertains to Transport Canada's oversight.

I could not say that one recommendation is more important than another. They are all important since a range of measures is needed to reduce the risk of another accident like the one in Lac-Mégantic.

Mr. Luc Berthold: It is true that a combination of factors led to this tragedy. It was not just one thing, as you showed very well in your report.

In your opinion then, could concrete steps be taken quickly to reduce the risk of this kind of accident happening again?

Mrs. Kathy Fox: Yes, exactly. In my comments, I recommended that the committee consider the need for an accelerated process in the case of regulations pertaining to safety.

Mr. Luc Berthold: Thank you very much.

We went through that quickly, you answered my questions.

Mrs. Kathy Fox: Thank you.

[English]

The Chair: Thank you very much to our witnesses for coming today. Thank you for your ongoing commitment and the work that you do to ensure the safety of Canadians and others.

We'll suspend very quickly for our other witnesses to come up.

• (1650) _____ (Pause) _____

• (1655)

The Chair: I am calling the meeting back to order.

We now have witnesses from the Department of Transport. We have Laureen Kinney, assistant deputy minister for safety and security; Brigitte Diogo, director general for rail safety; and Benoit Turcotte, acting director general.

Welcome, and thank you very much for coming this afternoon.

Ms. Kinney, would you like to lead off?

Ms. Laureen Kinney (Assistant Deputy Minister, Safety and Security, Department of Transport): Thank you very much, Madam Chair.

I don't have any intention of making a formal presentation. I just want to thank you for the opportunity to appear again. I look forward to your report when the study is finished. We will leave all of the time for questions by your committee.

The Chair: Thank you very much. That is very helpful.

No doubt everyone has a lot of questions, as we move forward to the closing of this railway study.

Mrs. Block, go ahead.

Mrs. Kelly Block: I would like to welcome our departmental officials back. I am sure we will be hearing from you many times over the course of this Parliament and the work of this committee.

Earlier, we heard from the Canadian Transportation Agency, and of course, you know that we have just heard from the Transportation Safety Board of Canada. I had the opportunity to ask them a question about the process, in terms of risk assessments, whereby a railway assesses an issue and informs Transport Canada, rather than the other way around.

What I would like to ask is, can you give us examples of major changes in operations for which a railway provided Transport Canada with a risk assessment in the past 12 months?

Ms. Brigitte Diogo (Director General, Rail Safety, Department of Transport): An example would be a railway company that has made a decision to start transporting dangerous goods. That would be a major change. It would have notified the department. It could also be a change in the volume of dangerous goods they are carrying.

Mrs. Kelly Block: With protective direction 36, railways must now post on their websites the breakdown of the top 10 dangerous goods they transport through a municipality, and provide a public report that communities can access. How are dangerous goods determined?

Mr. Benoit Turcotte (Acting Director General, Department of Transport): I will answer that one.

Protective direction 36, as you know, was recently issued. It brought a number of improvements that municipalities and railroads worked together on.

However, dangerous goods are assessed by the shipper, the person responsible for transporting the dangerous goods under the Transportation of Dangerous Goods Act and regulations. There are various tests and criteria to determine whether or not a particular cargo or goods are considered dangerous. There are nine classes of dangerous goods. It is up to the shipper to assess whether or not it meets the criteria for dangerous goods.

Once those criteria have been met and it is established that these are indeed dangerous goods, the shipper must determine the proper means of containment for transporting those dangerous goods, ensure proper awareness—that the proper placarding is placed on that means of containment—and ensure that the proper shipping documents are prepared.

In addition, certain dangerous goods, such as a number of flammable liquids, require an emergency response assistance plan.

So there is a whole process and a whole set of requirements under the act and the regulations that determine that.

Mrs. Kelly Block: We know there will always be people who will oppose the transportation of dangerous goods through their communities, regardless of the safeguards that are put in place.

Can you comment on how municipalities use this information?

Mr. Benoit Turcotte: The purpose of protective direction 36, which is the updated version of PD 32, is to ensure that municipalities have the information required for them to properly plan emergency response and training of first responders. We hope, and believe, that PD 36 will improve that.

There are a number of improvements made to that. One of those, as mentioned, is that public information is now allowed to be disseminated, whereas before it was kept confidential between the railways and the municipalities.

Other improvements now allow for a better sharing of information amongst municipalities that group together, for example, to pool resources for emergency response. A number of other improvements have been made to protective direction 36, which I would be happy to get into.

• (1700)

Mrs. Kelly Block: You mentioned first responders. I guess these are early days when we talk about protective direction 36, but have you seen any changes to these first response preparations plans by municipalities as a result of this order being implemented?

Mr. Benoit Turcotte: It's difficult to say. Up until now, since the original protective direction came into force, close to 800 communities have signed up to receive that information. We know they are finding it very useful. We do know they wanted to learn more, so I think the new version of this protective direction will provide them with more information. It is allowing them to start determining what goes through their community, which is very important, especially now that a list of the top 10 dangerous goods will be offered. That will allow them to really have a much better understanding of what goes through their communities, particularly when there are large quantities of dangerous goods such as with unit trains. In Canada, those are primarily transporting crude oil and ethanol. It provides much more information, so we think it is useful and working.

The Chair: Thank you very much.

Mr. Fraser.

Mr. Sean Fraser: During the TSB's presentation, we had a quick discussion about the use of technology such as fail-safe physical systems that would slow a train down when a certain signal comes on but is not followed.

Are there initiatives to implement similar systems by Transport Canada now? Are you getting any pushback from industry players?

Ms. Brigitte Diogo: For train control, there is a current working group under the Advisory Council on Rail Safety. It's a joint working group that includes industry participants to look at options and how to enhance train control. One of the discussions we'll be having in early June is taking stock of the work of the working group and discussing the way forward.

Mr. Sean Fraser: Turning to inspections, I lived in Calgary and was one of the evacuees during the flood in 2013. Around the same time the Bonnybrook Bridge, the rail bridge, collapsed and I know that the mayor of the city at the time suggested that a lot of people had been fired from CP.

Do you find a lack of inspectors with the railways to be a serious problem that is leading to increased incidents?

Ms. Brigitte Diogo: The challenges we are facing is in recruiting our inspectors and the industry is facing the same thing, in terms of massive retirements.

We have visited one of the centres for training that CN has put in place, so the industry is putting a lot of effort into this, from what we have seen, in terms of recruiting very early and training new employees. We haven't seen that being an issue in terms of their ability to be in compliance with regulations. Certainly, we pay close attention to training of those employees.

Mr. Sean Fraser: What are the biggest obstacles to the successful recruitment of more inspectors?

Ms. Brigitte Diogo: On the Transport Canada side, it's really how we compare with industry in terms of salary and benefits. It's always challenging to attract employees with experience into government.

• (1705)

Mr. Sean Fraser: Turning to the work-rest rules that are designed to combat employee fatigue with the railways, I know there has been enforcement for non-compliance before by Transport Canada, but

have you found the enforcement measures taken have actually had an impact on repeat offenders or recidivism?

Ms. Brigitte Diogo: It's a difficult question to say yes or no to. What we do pay attention to is whether the companies are responding to the enforcement action that we have taken, and whether the inspector can come to the conclusion that there has been sufficient action taken by the company. The issue of fatigue has always been a very challenging area for us in terms of oversight. However, it's definitely one of the priority areas that we continue to look into.

Mr. Sean Fraser: I'm just trying to brush over a number of different categories that we got some information on previously.

Turning to the issue of crossings, I know there's some identification of high-risk crossings that Transport Canada does, but is there a plan in place to reduce the incidents that take place at those priority crossings?

Ms. Brigitte Diogo: Yes. There are a number of areas the department intervenes in. I think you heard earlier from the Transportation Safety Board about the new grade crossing regulations that have been put in place, and there is a timeline for existing crossings to meet the new regulations.

We are spending a lot of time in terms of education, awareness, and communication with municipalities and road authorities about what the requirements are. The department also has the funding program, the grade crossing improvement program, that would allow municipalities and railway companies to apply for improvements to existing crossings.

There is also the work we do with Operation Lifesaver in educating the public about trespassing and the risks to railway safety or individuals' safety, in order to prevent accidents.

Mr. Sean Fraser: I figured I was out of time. Thank you.

The Chair: Sorry.

Ms. Linda Duncan: Thanks. It's good to see you here again.

The Auditor General in his fall 2013 report and again this fall raised serious concerns about a wide range of failings in the department's inspection and enforcement regime, including inspection findings not being well or consistently documented, poor follow-up on inspections to verify compliance, failed enforcement action, lack of enforcement training, failed oversight to ensure effective enforcement, and no training in risk assessment.

This was repeated by the Transportation Safety Board, the rail workers, the inspectors, and communities who have submitted written briefs. A big concern across the board has been overreliance on paper audits instead of field inspections.

What is the department doing in response to all of these concerns?

Ms. Lauren Kinney: There were a number of reports with different information in them that were all useful and valuable to improving our program. The Auditor General's report in fall 2013 focused on documentation, and they had other areas as well that were addressed.

Those were areas, as we were responding to the actual events in the tragic occurrence at Lac-Mégantic, that we could incorporate in our changes as we moved forward and looked at how to respond to those.

That was built upon by the reports that came out, both the interim recommendations and the final report, from the Transportation Safety Board. We have internal audits posted as well that I think you may be referring to, and those audits also go into some of those same areas.

We've taken a very holistic approach over the last two to three years to look at all of these items, in conjunction with looking at how the program itself can be improved, how training of our inspectors can be improved, and how the follow-up and documentation can be better addressed.

Some of these things are immediate fixes. Some of them are databases and better data coming in from railways, etc., that we can use for trend analysis. A series of elements has been put in place, and we have management action plans to address all of those elements, all of which are very well advanced. Most items are complete.

• (1710)

Ms. Linda Duncan: I'm not sure if that answers my question, but thank you.

I've been reviewing very closely all the regulations and legislation related to rail safety, and I have to say that it is among the strangest I've ever seen for the industrial sector.

There are two aspects to this, which a number of people have raised. They call it "regulatory capture", and that is the introduction of industry manufacturing rules. It seems that a lot of the approach is not the government taking the role of developing the regulations and then inspecting them and enforcing them, but the companies manufacturing these rules and then seeking exemptions.

The last parliamentary committee recommended that Transport Canada publicly disclose all exemptions to safety regulations, including the department's justification.

Is the department now doing that?

Ms. Brigitte Diogo: No, I don't believe the exemptions are published on the website.

Ms. Linda Duncan: Is there a reason why these are not open and transparent?

Ms. Laureen Kinney: I think I should just note a couple of points, if I may.

One point is that the rules system is somewhat in place because the rail industry in Canada, and in the U.S. for that matter, is not part of an international regime that sets international regulations, etc. This is something that is a little bit different from our other transportation modes, and there is, I think, a reason why the operation of those very complex types of details of operation come forward from the industry. They must be approved by Transport Canada. If we aren't satisfied with them, we will direct them to make amendments, and that's happened in a number of cases.

Ms. Linda Duncan: Of course, they could be promulgated by regulation.

Ms. Laureen Kinney: There's a legal framework set in place under the Railway Safety Act, which had a very rigorous review a few years ago. There were amendments made to the Railway Safety Act in the last year and a half or so, and Parliament has set up that framework, so I won't comment on that.

Ms. Linda Duncan: Do communities get an opportunity to review rules before they're approved by the department?

Ms. Laureen Kinney: That is a good question, because one point I was going to make was that the development of these rules must include the workforce, the labour organizations. Before these rules can be presented to Transport Canada, I think it's important to note that they must be shared with the unions that are involved in that work.

Ms. Linda Duncan: My question was about communities.

Ms. Laureen Kinney: At this point, there's no formal process in the legislation that requires sharing with communities.

Ms. Linda Duncan: Exactly.

Ms. Laureen Kinney: What we have been doing informally is discussing this with the Federation of Canadian Municipalities, but this is a point that no doubt will need further discussion.

Ms. Linda Duncan: So there could potentially be an amendment to give the potentially impacted communities a say in the rule-making. That might be a gap in the legislation.

It's odd that when companies are transporting their petroleum products by pipeline, they have to go through a Canadian environmental assessment process; given the scale and the magnitude of potential risk with the kind of traffic by the rail companies now, do you think it may be time to in fact be applying the same kind of process to the transport by rail?

Ms. Laureen Kinney: It's an interesting question, but I'm not really enough of an expert on the CEA process to be able to comment on that.

Ms. Linda Duncan: Has the department been looking into that at all, on whether or not you think you have adequate means to be assessing the level of risk?

Ms. Laureen Kinney: Well, in terms of the railway system, with the safety management system as well as the other regulations that apply in terms of safe carriage of goods and the Transportation of Dangerous Goods Act and their regulations, we do believe we have a safe system in place.

The Chair: Thank you very much.

Mr. Iacono.

[Translation]

Mr. Angelo Iacono: Thank you, Madam Chair.

According to the Teamsters Canada Rail Conference, the act does not define "qualified operator" and "operator control unit". Moreover, there is no limit on the distance from which a control device can be used to operate a train, or on train length or tonnage.

My questions are as follows.

What training is required for operators of a train remote control device? What are the characteristics of the remote control technology that can be used to operate a train? Why is there no limit on trip length or train size for which a remote control device can be used to operate a train?

• (1715)

Ms. Brigitte Diogo: Thank you for your questions.

The railway operating rules define what a qualified employee is. The term “employee” is defined in the regulations.

As to distance and train tonnage, we have reviewed the comments we received recently, not only from unions, but also from the Transportation Safety Board. In early June, we will be meeting with industry and union representatives. We will put this issue on the table for discussion and see if any changes to the regulations are in order. The current limit for the speed of this technology and the rules on tonnage and distance are U.S. directives, which do not apply to Canada. We are looking into this matter however.

Mr. Angelo Iacono: What about train length or size?

Ms. Brigitte Diogo: We did a comparative study between Canada and the United States to review the lessons learned that we will have to apply in the Canadian context.

Mr. Angelo Iacono: Is Transport Canada planning any other studies regarding the safety of remote control devices?

Ms. Brigitte Diogo: We have not yet determined which changes we will be making or what studies we will be conducting. We would like to meet with the parties in early June to discuss how to improve the use of this device. One of the factors is training. Under the rules currently, the operator using this equipment has to have the same training as a locomotive engineer.

Mr. Angelo Iacono: I have a final, brief question.

Is this remote control device for trains in use now?

Ms. Brigitte Diogo: Yes.

Mr. Angelo Iacono: I am talking about training. Is it used in the training?

Ms. Brigitte Diogo: Yes.

Mr. Angelo Iacono: Is it used often or just occasionally?

Ms. Brigitte Diogo: It is used very often.

Mr. Angelo Iacono: Thank you.

[English]

The Chair: Mr. Hardie, you have a minute and a half.

Mr. Ken Hardie: As we heard from the chair of the Transportation Safety Board, they've made a number of recommendations to improve safety, directed specifically at Transport Canada. Some of them have been around for a long time. I'm wondering why Transport Canada hasn't acted more quickly to implement them. The watch-list goes back quite a long time.

Ms. Laureen Kinney: I think it would be something that is case-specific, so it probably would be more useful to comment on specific recommendations, but in general, where there is a safety issue that has been raised and there is an evident step forward that can be taken to rapidly address that, we do have tools to make some changes to those. We do consult with industry and with other affected parties to

find out what those unintended consequences might be, as the TSB chair mentioned earlier, and we go through a process of looking at how they could be implemented and what kind of regulation you would make to do that.

In some cases, in addition to those steps, we need to do some research on what that would look like. On some of the recent recommendations on OC Transpo, for example, in terms of distracted driver guidelines, to follow up on that recommendation is going to need some research. It's going to need some collaboration with the provinces. Some of those types of things can take a little longer.

Mr. Ken Hardie: Very quickly, this is the same question I've asked the other two witnesses. I can't believe how quickly the time has gone this afternoon. It's been very rich in information.

In terms of the balance, the complement, if you like, between regulation and safety management systems, are you comfortable with where that's at? Or do we need a rebalance, perhaps, a new association between what the companies are doing and what government reasonably should be expected to do?

• (1720)

Ms. Laureen Kinney: I would say initially—and Ms. Diogo may want to add a comment—that one of the most critical elements for us to look at is the fact that we have a very new, very much more robust, more demanding, and more prescriptive safety management system that was established slightly over a year ago now. We're still in the process of full implementing it and then analyzing some of the elements that were added to the requirements. For example, there is the need for the company to look at the effectiveness of their own processes, etc.

For an assessment of how well the safety management system is working, we will be doing full audits, and we will be looking at those kinds of measures, comparing them, and then looking at the balance between prescriptive and/or performance-based regulations that set specific requirements, as well as these more general requirements that the company do things under their safety management system regulations.

There is probably going to be an ongoing balancing act to be done, because part of it goes to, as you said, what are the responsibilities that the railway company should do and, as has been pointed out by other committee members, certainly the responsibility of the department is to look at how well the railways are doing that.

From the safety management system audits that we do, we will likely see areas where most railway companies may be a little bit weak, and either it may be an area that needs amendment to the safety management system regulation if we find that, or it may be that there is a prescriptive type of “you must do X or you must do Y” that is needed from that.

Those are things that are in a continuing evolution, I believe.

The Chair: Thank you very much for that long answer.

I've taken that minute and a half off Mr. Badawey's time.

I hope you will forgive me, Mr. Badawey. You now have four minutes. It was critically important information.

Mr. Vance Badawey (Niagara Centre, Lib.): It's one of those situations of asking for forgiveness versus asking for permission.

Thank you, Madam Chair.

Thank you for being here this afternoon, folks.

I have two quick questions. One is with respect to emergency planning in response, especially at the municipal level. As a former mayor for close to 14 years, I know we've had a few instances and therefore run-ins with Transport Canada with respect to our emergency planning process. By the way, they were always positive.

In this instance, especially with railway training, railway protocols, and things of that nature, has Transport Canada reached out to first responders at the local level, municipalities, etc, to be an integral part of their team? Have they shared their protocols with respect to emergency response, ongoing training, and being proactive throughout time so that it's happening before the fact versus reacting after the fact?

Ms. Laureen Kinney: I would answer in a slightly different manner, if I may, in terms of the work that's been done in the emergency response task force that was established. It was led primarily on the transportation of dangerous goods, looking at some of those issues of the types of flammable liquids, the training first responders need, the kind of information they need, the kind of incident command centres needed, and the kind of instant command protocols, communication protocols, and what may be useful in these rather specialized subsets of emergency response.

That task force was set up with, I would venture to say, everyone who we could think of that had a role to play, who had an impact: railways, the emergency responders who are hired by shippers and others, the municipalities certainly, the firefighters, fire chief associations, aboriginal volunteer firefighter communities, and a raft of others. They worked for a year and a half on a set of recommendations to look very fulsomely at how the response system could be improved.

A number of those recommendations, about 12 or more, have already been implemented. There were about 33, and I think they'll end up at 40. We're taking a very serious look at trying to move those as quickly as we can.

I think there's a tremendous amount of work there that is bringing all the players in the response continuum together to really look at how this can be improved. I can give you a number of examples.

Mr. Vance Badawey: You are at this point in time injecting Transport Canada into those individual protocols?

Ms. Laureen Kinney: Yes, that's right.

Mr. Vance Badawey: That's great news.

My second question is with respect to Bill C-52. Has Transport Canada taken one of the recommendations to take further action relating to its powers under the bill to develop regulations to expand the supplementary fund levy to other dangerous goods that are deemed appropriate?

•(1725)

Ms. Laureen Kinney: Yes, there is work going on in the policy side of our house that's responsible for implementing that element. I don't have the details with me, but we could provide further information on that. That is well advanced, in my understanding.

Mr. Vance Badawey: I'm assuming from that answer that you are implementing the CTA review panel's recommendations to study and expand on that levy?

Ms. Laureen Kinney: My apologies; that wasn't how I understood the question. The CTA review is still being discussed, and there are a number of round tables that the minister is holding to talk about the elements that were raised there. It would be too early to say how that will fall out.

Mr. Vance Badawey: Thank you.

The Chair: That was three and a half minutes; you did well.

Ms. Linda Duncan: I have a point of order. We requested quite some time ago that Transport Canada provide their enforcement compliance policy and we have yet to receive that. We would like to receive that before we begin doing the report, which will happen almost immediately.

Ms. Laureen Kinney: I believe some documents were provided to our parliamentary affairs group to provide to the committee, so you should be seeing them very shortly. I apologize for the delay.

The Chair: How long is "very shortly"? I ask you that because the analyst will be working on the report.

Ms. Laureen Kinney: My understanding is within the next day or two, very soon, but it goes through another process so I'm hesitant to say for sure. I can certainly take that back and make sure that we move it very quickly.

The Chair: Given the fact the committee has been waiting for some time, if you could get them to us in the next 24 hours, it would be very much appreciated by the clerk.

We're almost at 5:30, and this is the last group that we have here. I just want to ask the committee if there are any other outstanding questions that you need to quickly get out there.

Ms. Watts, did you have a short comment or question?

Then maybe we'll have Ms. Duncan, if she wants.

Ms. Dianne L. Watts: Yes, just a quick question.

We had talked before about the list of 500 high-risk crossings that had been identified. I understand that the grade crossing improvement program is in place now.

Is Transport Canada taking any proactive measures to mitigate some of the risks?

Ms. Brigitte Diogo: Yes, we do inspections. As I mentioned earlier, there are new regulations and we've been sharing information with municipalities, road authorities, and even some of the smaller companies in terms of what the requirements are under the rules.

We monitor the information that comes out of accidents to take proactive actions.

Ms. Dianne L. Watts: So, of the 500, does every single city and municipality know where their high-risk crossings are?

Ms. Brigitte Diogo: The information we have in our database has all the crossings ranked from 1 to 22,000. That information was made public by the minister on April 28.

Ms. Dianne L. Watts: Is this posted on a website, as opposed to being engaged with the community?

Ms. Brigitte Diogo: Yes, and in addition, when we become aware of a safety issue, we do engage proactively with municipalities.

The Chair: Ms. Kinney.

Ms. Lauren Kinney: My apologies, but would it be possible to make a minor correction to some of the comments that Ms. Diogo made? She just wanted to correct something that she said in the previous statement. It's very short.

The Chair: Yes, please do.

Ms. Brigitte Diogo: It's regarding my answer in French earlier in terms of the qualifications of the RCLS, remote control locomotive systems, operator. I indicated in French that they had to be trained as a locomotive engineer. In fact, they are, according to regulation, trained and qualified by the railways to use the technology in addition to being trained as a conductor/foreman, not a locomotive engineer.

The Chair: Thank you very much, Ms. Diogo.

Mr. Fraser.

Mr. Sean Fraser: On the issue of remote devices. I understand there is a risk assessment process in place.

Has the use of remote devices ever been rejected after having gone through the risk assessment process?

• (1730)

Ms. Brigitte Diogo: There are no specific requirements for a risk assessment related to the RCLS technology. Under the SMS regulations, when there are significant changes to operations, the railway companies are required to notify Transport Canada and to conduct a risk assessment. We can require those risk assessments.

The use of the technology is not something that Transport Canada approves on a one-to-one basis.

Mr. Sean Fraser: When a risk assessment is provided, what does Transport Canada actually do with it?

Ms. Brigitte Diogo: When we receive a risk assessment or where we go on site to review a risk assessment, that informs our enforcement inspection planning. It is required to bring other parts of

the program together and determining whether, in having a conversation with the railway, the risk assessment is sufficient in our view in mitigating risk.

Mr. Sean Fraser: If it's not, can you not reject the use of the remote device?

Ms. Brigitte Diogo: There is no direct link between the two and, yes, we can take other actions.

Ms. Lauren Kinney: I would like to add to that. If there is an unsafe action of any kind that was not adequately assessed in the risk assessment, there are several different authorities under which the inspector and/or the department or minister can take action—and that is, without hesitation, what we would do.

The Chair: Thank you all very much for the valuable information. We look forward to hearing some comments back from you when we table our final report.

To the committee members, I understand that there has been some discussion. The Prime Minister is making an announcement on Wednesday, so we would start at 3:45 rather than 3:30.

Is that agreed?

Some hon. members: Agreed.

Ms. Linda Duncan: Is the announcement in the House?

The Chair: It's in the House, so there might be a slight delay in our starting time.

The other issue is regarding the drafting instructions. Please come with those instructions for our analyst on Wednesday, as she will be starting to prepare the report, and be ready to talk about future business.

We will also get a note from the clerk regarding Lac Mégantic and the particulars of that trip very shortly.

Ms. Linda Duncan: The timing of when we can get to the airport in Montreal is really important.

The Chair: The clerk is working on that. I suggest that you talk to him.

Ms. Linda Duncan: That will determine whether some of us can go or not.

The Chair: I suggest that you speak to the clerk.

If there's no further business, I will adjourn the meeting.

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