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

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**EVIDENCE**

**Thursday, March 13, 2008**

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**Chair**

**Mr. Mervin Tweed**

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Thursday, March 13, 2008

•(1105)

[English]

**The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)):** Good morning, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 17. Pursuant to Standing Order 108(2), this is the study on rail safety in Canada.

Joining us today we have the Honourable Doug Lewis, chair of the advisory panel for the Railway Safety Act review; Tim Meisner, executive director, Railway Safety Act Review Secretariat; and Sheila Smith, director of planning and liaison, Railway Safety Act Review Secretariat. Thank you for joining us today.

I know there's a lot of information to be shared today, so I think we'll get right at it.

I will advise the committee that I have set aside the last 10 minutes of this meeting to confirm where we're going when we come back from the break.

I would ask that you keep your questions as short and concise as possible so everyone can participate.

Mr. Volpe.

**Hon. Joseph Volpe (Eglinton—Lawrence, Lib.):** Mr. Chair, given the length of this report, the stories associated with it, and the presentation, are you going to allow some flexibility of time, or are you going to go strictly to the 10-minute presentation and then off to questions?

**The Chair:** Mr. Lewis has requested a bit of time beyond the 10 minutes, and I'm going to try to keep him close to that. I do know there are a lot of questions.

**Hon. Joseph Volpe:** If it's all right with the other members, I wouldn't mind hearing what the experience of the panel was, and I don't think a few minutes is adequate. I don't know what the rest think, but 20 minutes sounds a bit more reasonable, although that might be a bit excessive.

**The Chair:** I'll keep a close eye on the clock and advise Mr. Lewis when he's running out of time, if that's suitable. I think we definitely want to hear from the chairman, so if that's okay...

**Hon. Joseph Volpe:** Are you okay?

**The Chair:** Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Mr. Chair, you're in charge of the time. The extra time that Mr. Lewis wants is fine with the government.

**The Chair:** Mr. Lewis, I'll ask you to begin. Welcome.

**Hon. Douglas Lewis (Chair, Advisory Panel for the Railway Safety Act Review, Department of Transport):** Mr. Chairman, I want to thank the committee for asking me to appear so quickly after the release of the report by Minister Cannon. I take this as a signal that the committee, in a non-partisan way, wants to focus on improvements to railway safety, and I think that's an important signal to send to the people of Canada, the Government of Canada, the regulator—Transport Canada—and the railway industry.

I don't believe in long remarks, either as an opposition member of Parliament or as a member of government or as a minister. I prepared these remarks myself, and I guess I spent a little more time on preparing them than I did on measuring the time. So if you'll bear with me, I'll scoot through them.

I want to point out that we submitted an advance copy of our report to the minister on November 30. Once the report was submitted, I turned to other things that I had put aside in order to complete the report, such as my law practice and my responsibilities as a bencher. Three months later, I came back to take a fresh look at the report and to say what I think is the most important theme that we came upon. I think the most important theme for everybody is how we improve the safety culture of the Canadian railway industry from the standpoint of the regulator, the industry, and the public.

I used the old formula of who, what, where, when, why, how. I switched it around a little bit, and I dealt with the "what" first: an improved safety culture in the Canadian railway system from the standpoint of the regulator, the industry, and the public. Then I deal with why, when, where, and who, and I'll take you through the report with the how.

First of all, there's no question the Canadian railway industry is vital to the Canadian economy. In a country as vast as ours we have to export product to international markets and import product to consumers in Canada and the U.S. as quickly and as efficiently as possible. At the same time, we have to do it safely. Why safely? Because we care about the people running our railway operations and the people affected by accidents; because we care about environmental problems that can occur when things go wrong; and lastly, for purely business reasons, because a safe operation, as everyone knows, is an efficient, effective, and more profitable operation.

Building a railway safety culture is something that involves everybody—the regulator, the industry, the public. We should want it to happen as soon as possible, but it doesn't happen overnight. We're fortunate that we're building on a solid base that the regulator and the industry have worked at for several years. We're not starting from scratch and we're not dealing with a disaster. We sought the figures out. The Canadian railway safety record compares favourably with comparable railways in the United States. That's of comfort today, but we want to lead the U.S. tomorrow. What do we have to do to lead them? It's not good enough to just say that we lead them today, so let's just sit still.

Railways in Canada operate in all sorts of places, from ports to mountains to prairies to forests, in urban and rural settings. Terrain and weather conditions are always changing. These are the factors that challenge the maintenance and improvement of the Canadian railway safety culture.

As well, we have multi-jurisdictional issues that you don't have in a place like the United Kingdom, for example. We have a federally regulated railway, and we have the provinces and municipalities with responsibilities with respect to proximity issues. They can't advocate those responsibilities by simply saying it's the feds who run the railways.

Improving the Canadian railway safety culture involves the Canadian people as interested observers, Transport Canada and related government agencies, the industry, and the Government of Canada as the source of the resources for the regulator. Everybody has a role to play.

Now I'm going to deal with the “how”, and I'm going to refer to the chapters in the report, if I may.

- (1110)

The first is the state of railway safety in Canada. As we stated in the report, both CN and CP have lower accidents than comparable U.S.-based operators. We're pleased to learn that crossing accidents in Canada have shown a clear downward trend since 1989. We attributed that to outreach programs undertaken by Transport Canada, the railways, their employees, the Federation of Canadian Municipalities, and other interested parties.

But main track derailments and non-main track accidents—yards and spurs—are of concern to us. While everybody relates to the transport of dangerous goods, and the actual transportation of dangerous goods has risen 60%, accidents and incidents have declined considerably, according to TSB statistics. Furthermore—and this is really interesting—only 12% of the accidents occur when

the dangerous goods are moving. To us, that said we have to pay a little more attention to what's happening when the dangerous goods are stationary.

Governance issues, whether or not they are labeled as such, are at the heart of many of the concerns and frustrations brought to our attention as a panel. Concern was expressed about inconsistencies from region to region in Canada, both in Transport Canada's oversight and in railway operations. This must be addressed if we are to have a seamless safety culture throughout the country. A rigorous, structured consultation process is an effective tool that would provide transparency and build confidence among all participants. You will note that the report addresses consultation issues extensively.

On the regulatory framework, the basic principle that has evolved over the last 20 to 30 years is that the railway companies must be responsible and accountable for the safety of their own operations, and the regulator, Transport Canada, must retain the power to protect people, property, and the environment, by assuring that the railways operate safely within a national framework.

Regulations that are produced and promulgated by the Government of Canada have a role to play, but the railway industry has regulations and rules. The rules are developed for an individual railway or railway companies and are approved by the minister, but we found there has to be a more clear, transparent method of developing the rules in order to avoid confusion and frustration. We suggested a regulation that governs the way rules are developed.

There's a term out there called a “certificate of fitness”. We feel it's a misnomer. The panel doesn't feel that simply by demonstrating financial stability and presenting an insurance policy and an SMS system for Transport Canada to review should qualify a railway to operate. We feel we should dealing with a rail operating certificate. We described it in the report. What it would mean is that the railway companies would have to meet baseline safety requirements in advance of operating, and that would be a condition of receiving a certificate of fitness.

Safety management systems, as you can imagine, took up a great bit of time of the panel. We support the SMS system and concept. We heard from companies with strong functional SMS, such as Air Transat, and we are convinced that this is the right approach.

Nobody has done a perfect job either of explaining to employees how safety management systems are supposed to work or making the SMS work for those involved. The whole concept of safety management systems was meant to shift management thinking to hazard identification, risk assessment, mitigation and monitoring, and away from a rules-driven approach. They were not intended to replace any existing regulations, rules, or standards, but to develop a more comprehensive way of managing safety. They didn't mean deregulation or industry self-regulation.

• (1115)

The railway industry has failed to achieve the maximum buy-in from the people most directly concerned about the safety of the industry, namely the employees on the front line. Similarly, Transport Canada has failed to maximize this new approach due to inconsistent implementation across the various regions and insufficient resources. The cornerstone of an effective SMS system is an effective safety culture.

The media has made reference to the panel's comparison of VIA, CP, and CN. I stand by our comments. We do not believe that you instill a safety culture through a strict, rules-based system that lays blame on employees for errors or failures, but fails to recognize the management influences or organizational situations that may be contributing to those errors or failures.

The most important person involved in an SMS is not the person who looks at it after it's been devised. The most important person involved in an SMS is the person who is at risk and participates in the risk assessment and mitigation measures. Everybody in a company then makes it work. Both functions go hand in hand, but it all has to start at the base level.

At the same time, Transport Canada has to shift its emphasis to monitoring the railway's performance rather than inspecting. The railways need to implement effective SMS systems and demonstrate to Transport Canada that they are effective. Effective SMS systems monitored effectively by Transport Canada will contribute considerably to an improved safety culture.

Reliable information is central to risk management and planning effective regulatory oversight. In this way, safety advancement becomes possible. I'm going to boil this down quickly. We want Transport Canada to be in a position to collect and use the information necessary to improve safety in a proactive manner as soon as possible. That means they control what information is collected, analyze it, and disseminate it.

This is in no way a criticism of the Transportation Safety Board. We didn't hear any indication throughout the piece that their investigations are anything but first class. But their focus is on collecting information after accidents, and in that case it's reactionary. We want Transport Canada to have more information faster. Our suggested approach would also provide a single reporting window for industry. Information should be used to prevent accidents rather than simply report on them.

Proximity issues are dealt with in the report. Everybody has a role to play in contributing to a better safety culture with respect to railway crossing accidents. Public education by Transport Canada, the railways, the Federation of Canadian Municipalities, and others

have reduced accidents and fatalities. Funding safety improvements at crossings has also had a positive impact on safety. Whether stakeholder initiated or funded through Transport Canada's grade-crossing improvement program, continual safety improvements at crossings are important. The split jurisdiction between municipal-provincial land use planning and railway operations has led to problems that must be addressed.

On environmental protection and response, the public has a heightened interest in environmental concerns. They're more apt to view the effectiveness of the safety culture surrounding the railway system with how effectively it protects the environment. That's an important point of view.

We're satisfied that efforts have been made to improve response to environmental disasters. However, we should learn from those disasters, such as at Lake Wabamun. That disaster didn't involve a dangerous good, but it did considerable damage to Lake Wabamun.

We suggest we look beyond dangerous goods and take a look at environmentally hazardous goods. One of our recommendations is to develop a standard emergency response protocol. We're also concerned about environmental problems on the horizon with spills over a long time in rail yards.

• (1120)

Concerning operational Issues, I have to tell you there would be nothing worse than a panel comprised of two lawyers and a management consultant and one guy who knew something about railways coming back to you and saying, here are the following operational issues that we've solved. So we didn't get into that, but we touched on some of them with a view to identifying problems.

We are convinced that the operational issue that affects an effective Canadian safety culture the most is fatigue management. The issue cries out for an effective solution or for addressing solutions fast. It's been around far too long. There are new and innovative ways of assessing the factors surrounding the issue, such as rules, fatigue plans, and collective agreements. Finding and working on more effective solutions is crucial, and we would urge the regulator, the industry, and the unions to work collectively on this issue.

We looked at scientific and technological innovation. The railway industry has made great strides in adopting new and innovative technologies, focusing on infrastructure and equipment to improve safety, but there's room for more innovation. If our safety culture is to keep pace with the times and improve, the government must create an environment that is conducive to assessing and implementing new policies.

The government, under resources, also has to provide more financial support to the regulator. In our opinion, the regulator is doing an incredible job with the resources provided, but over the years has not been given sufficient jobs to advance railway safety.

I say this as a former member of Parliament and a former Minister of Transport: I think we have to zero in on the Minister of Finance. He probably won't be pleased to hear that, but I mean it; it has to be in the ministry. We have to demonstrate the importance of the railway industry to the Canadian economy and of the government revenues, direct and indirect, that are flowing from the railways, and give Transport Canada the funds.

The most important element that the panel dealt with that affects the safety culture is relationships. Railways are responsible for the safety of their operations; Transport Canada is responsible for a safe national transportation system. This requires a recognition of the roles and a collaborative approach.

The regulator and the industry simply have to try harder to build a better working relationship to improve the safety culture. Openness, transparency, and accountability are key elements in building that better working relationship.

Let me conclude.

Our panel spent six months travelling across Canada, listening, watching, asking, and probing people in the Canadian railway system. We started out with a common purpose: none of us wanted to spend a lot of time compiling a report that was put on a shelf; we wanted to produce something that was meaningful and useful.

So we did something different. After we decided on our recommendations and grouped them in a manner in which they appear in the report, we set up a validation exercise. Shortly after Labour Day, we fanned out across the country and sat down with the major stakeholders: Transport Canada, the TSB, provincial officials, the railways, the unions, and the Federation of Canadian Municipalities. We gave them a copy of our recommendations—just the recommendations, as they appear at the back of the report. We said, read them. We sat there and they read them. Then we retrieved the copy. We asked them if there were any recommendations that they thought were over the top or that wouldn't fly.

We then reconvened in Ottawa and discussed what we had heard as a panel. There were no recommendations that were abandoned because they were over the top or wouldn't fly; a few were tweaked.

That validation process assisted us in directing a narrative that explained the recommendations and how we came to them. We were able to submit the report on the deadline of the end of the fall. We put it in on November 30.

•(1125)

I have to say that I've been involved with the committee process for several years in various venues. I feel I was fortunate to have been involved in what I think is such a productive report.

Someone in Transport Canada or the Prime Minister's Office found four individuals from different backgrounds who got along famously. We had Sheila, and Tim Meisner, our executive director, who put together a terrific staff. We had cooperation from everyone.

It was clear that improving safety was a common goal. We were well received and briefed, and we had fulsome discussions. As a result, I think we have come up with a report that will enhance the safety culture of the Canadian railway system.

Thanks very much, Mr. Chairman, for your patience.

I am ready to take any questions.

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

I will open the floor. Again, because I know there are going to be a lot of questions, I'm going to try to keep it as tight as I can to the seven minutes. If you see me give you the one-minute sign, please be as brief as you can.

Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Thank you, Mr. Lewis, Mr. Meisner, and Ms. Smith.

I'd like to compliment you on your committee. I sat in on one of your sessions. I'm very impressed with the work you've done.

There's a lot to cover here. In the beginning of your comments I think the priority you established is one that I heard during the hearings we had. The priority has to be the people, both the people who run the railway, who work it—the employees—and the people who are affected by it, the people who live in the communities through which the railways run. Second is the environment, and third is the profit or the operation of the railways. At times it seems it's the opposite of that. We were told that seemed to be a perception rather than a reality.

To get into the questions, on page 215 of your report you talk about resources for Transport Canada being inadequate, and you suggest as well that Transport Canada needs to rethink its approach. They're understaffed. You're suggesting the renewal of staff and experience in the rail safety directorate, and that the department rethink its approach to inspection and audit so that the skills and time of the inspectors can be more effectively used.

I'm wondering if you would care to expand on that.

•(1130)

**Hon. Douglas Lewis:** Thank you.

The shift to the safety management system involved a shift from inspecting to auditing. The theory was that the companies are responsible for their operations and Transport Canada is responsible for a national safety system. The companies have to develop the systems and come to Transport Canada to show that the systems for safety work. The company has to audit them and Transport Canada has to audit them. That involved a shift in the skills of the people who did the job. There's a difference between being an inspector and being an auditor. You're looking for different things. If you go out and inspect rail lines, you're putting a lot of Transport Canada's resources into inspecting the rails.

The theory in shifting to safety management systems was that companies should do the inspecting and have the systems to audit where things are going right with the rails and where they're going wrong. Transport Canada should then oversee that function of the companies. That involved having people who understand that they're auditing.

As it happens, my first career was as a chartered accountant. I learned something about auditing, and it came up time and again. Quite frankly, there are differences across this country in the attitude of Transport Canada inspectors towards the whole issue of SMS and auditing. That's what we found.

**Mr. Don Bell:** You made a comment, and I think you say it in your report, that the SMS is not perfect. Do you think it's adequate?

**Hon. Douglas Lewis:** I refer you to page....

**Mr. Don Bell:** While you're looking at that, I'll ask a second question, so it can be working in the back of your mind. You commented that dangerous goods incidents have declined, while in other categories the incidents and accidents had not. Do you think luck or action explains why serious incidents involving trains didn't occur as often with hazardous goods?

**Hon. Douglas Lewis:** Let me answer the last question first. I don't think it's attributable to luck. A great deal of effort has been put into the whole issue of dangerous goods. We met with the Canadian Chemical Producers and talked to them about their procedures. They had a great deal of pride in what they were doing to reduce problems. We were impressed by the effort being put into the transportation of dangerous goods.

To go back to your first question, if you go to page 69, there's a quote in there from Faye Ackermans, of CP. The first sentence says it all: "[Changing culture] is a journey; the progress we have made is still fragile." I don't think you ever achieve perfection in trying to create a safety culture.

There's also, in this particular section, an effort made by an individual to define what happens. On page 73, there's an interesting evaluation tool for measuring safety culture. There are five types of safety cultures that companies have. That particular example tries to describe what this culture is made up of in the various companies.

● (1135)

**Mr. Don Bell:** I noticed that you talked about the importance of fatigue, which was reported by the employees. They also raised the question of employee training, training for crews, which they felt was inadequate.

I'm wondering if you can comment on both a little more. On the fatigue issue, some of the U.S. accidents and the serious one outside Hinton were the result of fatigue. That was a concern we heard strongly. The other issue is the experience and training of the crews.

**Hon. Douglas Lewis:** Let me answer the fatigue question first. If you go to page 154, you'll see the countermeasures that the CANALERT '95 study suggested to deal with fatigue. The more I read this, the more I come back to a phrase on page 157 that says "sleep is the important element, not just time 'off duty'". There are a whole lot of factors involved in fatigue.

As for training, the response may contain a measure of what happens when management steps in and starts running trains when there's a strike. I'm just saying "a measure".

The companies are in charge of training their own employees. As for how much Transport Canada's oversight is related to company training of personnel, we didn't get into that in much depth. I still think the sticking point is the fatigue management issue.

**The Chair:** Monsieur Laframboise.

[*Translation*]

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

I would like to congratulate you for the work that you have done. Your recommendations zero in on the real problems. This is a significant achievement. You were elected yourself, so you know that we have to be able to propose appropriate solutions once the problems are identified. I am proud of your assessment. On page 15 of your report, you say the following about accidents:

While it would seem that the recent upward trend (1998-2005) reversed somewhat in 2006, TSB data to July 2007 shows that main track derailments are higher than in 2006 and near the five-year average (2002-06).

As we have already noted, these are the accidents whose consequences are more severe in terms of material and environmental damage. You underlined the fact that, in the case of these more dangerous and more environmentally-hazardous accidents, there has not been an improvement. The trend is apparent. It is true that our average may be better than in the United States, but the fact is that things are not improving. That, more or less, is what I gathered about accidents.

Is my interpretation correct?

● (1140)

[*English*]

**Hon. Douglas Lewis:** Thank you very much, Monsieur Laframboise.

You are correct. We had to figure out what the state was, and we didn't want railways to tell us. We commissioned a specific study on the state of railway safety and asked someone who dealt with statistics to present us with those statistics. So I'm reasonably confident, despite the difficulties we referred to in other places in the report as to the reliability of the statistics, in what they tell us. Naturally we want to see the trends. It does appear that they went down in 2006, but unfortunately they're back up in 2007. That's a hard fact that we must deal with. That, I think, ties in with the whole issue of the collecting of statistics.

When you spend six months travelling across the country, there are things that really jump out at you. We were in Washington talking to the FRA, and they had the same statistics we had. Their statistical line went like this, but then it went sharply down about two years before us. I said to the individual, “What happened there? I’m interested in what caused that.” He said, “Well, we noticed that it was going like this, and we called a meeting to deal with it.” Their statistical line for derailments, either main line or non-main line, was going down.

That is why we say we want Transport Canada to be in a position to decide with the railways what statistics will work for them: to provide them with the information to come up with better solutions faster.

[Translation]

**Mr. Mario Laframboise:** I understand. That leads me to my second question. The committee had an opportunity to take a close look at the safety management system for air transportation. I see that you used Air Transat as an example. Representatives from ICAO, the International Civil Aviation Organization, told us during their testimony that a safety management system must not replace Transport Canada’s inspection and oversight. That coincides with the recommendations you make in your report. The objective is to create a culture of safety.

Of course, the situation for air transportation is not the same as it is for rail. After all, once an aircraft has taken off, its highway is the air, whereas a train travels on thousands of kilometres of track. On page 67 of your report, you say:

It has been nearly seven years since railways have been required to implement SMS. While progress has certainly been made, in the Panel’s opinion, the implementation of SMS across the rail transportation system and by the regulator has been inconsistent. The Panel expected that, after so many years, both the regulator and the industry would have made more progress.

Your observation is blunt: after seven years of SMS, you expected more progress than has actually been made. That concerned us with air transportation and it also concerns us with rail. We do not feel, in fact, that there is enough staff to oversee the SMS and to do the required inspections.

In your report, you say that Transport Canada should attach more importance to overseeing performance than to inspections. The fact remains that thousands of kilometres of track have to be inspected. If Transport Canada is not capable of taking on this oversight through inspections on the ground, how are we to be sure that the safety management system is operating perfectly on every stretch of track?

● (1145)

[English]

**Hon. Douglas Lewis:** I think your reaction is a natural one. I guess the way I would approach the answer is this. We are not suggesting that you completely eliminate inspections, but we are suggesting that by auditing SMS systems and combining that with an effective program of inspections, you can get at the problems. The companies are inspecting the rails. That’s a given; they do their rail inspections.

The question is, should we duplicate the company’s efforts, or should we turn Transport Canada’s mind to where the problems are occurring, zero in on what’s breaking down in those areas, and then

do our follow-up inspections? That, I think, is what we were driving at.

It’s a whole change of culture to sit down with audits and to take what the company says they have done to develop their SMS system and say, all right, we’re having problems with this type of rail or in this type of terrain; that’s what our audit shows us, and we’re going to turn our inspections to that.

In other words, I think the SMS system is a tool for better targeting the efforts of inspectors if it’s used properly.

**The Chair:** Mr. Julian.

**Mr. Peter Julian (Burnaby—New Westminster, NDP):** Thank you, Mr. Chair.

Thank you very much for coming before the committee.

It’s interesting to see the statistics since SMS was implemented in the year 2000. We have a couple of anomalies—from 2001 to 2002 there was a slight fall, and from 2005 to 2006 a slight fall also—but generally, the trend has been upwards in terms of accidents.

I noticed, Mr. Lewis, in your presentation—which was very good—that you used the verb “failed”, that the “railway industry has failed to achieve the maximum buy-in” and “Transport Canada has failed to maximize this new approach”, in referring to SMS. From interpreting your comments, I would suggest that the railways have, in a sense, failed to implement effective SMS systems.

Do you believe the implementation of SMS has been a failure or has been ineffective?

**Hon. Douglas Lewis:** Can I drive somewhere between the two? I don’t think it’s been a failure; I don’t think it’s been ineffective; I don’t think it has been as effective as it could be.

**Mr. Peter Julian:** We’re seeing all the statistics you’ve presented in your report. There’s no doubt there’s been an upward trend in railway accidents. The point is that something is fundamentally wrong. It’s not that it’s not as effective as one might hope; it’s that we’re seeing a higher railway accident rate, so it’s difficult to use the term “not as effective as one might hope” when we’ve seen railway accidents skyrocket.

**Hon. Douglas Lewis:** I don’t know that they’ve skyrocketed. They are trending upward, there’s no question about that, but look at where they are. Where are they occurring? The number of collisions is down, but the number of derailments on main lines and on non-main line track is up, and that’s where we say we have to attack it.

I’d have to get back to you on this, but it seems to me the whole SMS idea hasn’t been around that long. The act came in in 2000.

**Mr. Peter Julian:** The implementation was in 2000, yes.



**Hon. Douglas Lewis:** It's going to take a while to get it proclaimed and to get it working effectively. I wouldn't say SMS has failed for that reason.

**Mr. Peter Julian:** You do use the verb "fail", so certain aspects of the implementation of SMS, in your words, have failed.

I'll come back to the question we've wrestled with as a transport committee. A number of people came forward and testified on behalf of SMS in the airline industry, but they fell into two groups. The theoretical individuals said in theory SMS will make the airline system safer, and then the practical witnesses came forward and said SMS simply will not work.

I know my Conservative colleagues disagree, but the reality is that very notable witnesses—as Mr. Fast well knows—criticized the SMS approach.

Of course, if the Conservatives were that interested in bringing it forward, they wouldn't have pulled Bill C-7.

That being said, I'd like to come back to two of the practical aspects. Do you believe the cutbacks in Transport Canada, the reduction in resources you very clearly identify in your report, are part of the reason we have not seen...? Whether you call it failure or not as effective as you would like, the cutbacks in resources in Transport Canada have made a difference to that increase in the accident rate and the problems with the implementation of SMS.

• (1150)

**Hon. Douglas Lewis:** I would rather approach it by saying it's not that the resources to Transport Canada were cut back under any one government; they have just stayed even while the amount of traffic and the government revenues from the railway industry have gone up.

For example, in 1995 you didn't have any revenue from CN, did you? It was not producing any corporate profits, and CP was not, according to the railway statistics. They are profitable now.

We're saying to the government of the day and to the Minister of Finance that Transport Canada has to be funded properly to implement the SMS.

**Mr. Peter Julian:** Thank you.

The other issue you raise very clearly is information collection and dissemination. Do you believe the safety data, the safety audits, should be available to the public, that the public should know which companies are doing an effective job on safety and which companies are not? Again, with Bill C-7, which the Conservatives have pulled, that information was not accessible to the public, so people wouldn't know whether they're getting on an airline that has an atrocious safety record internally or an effective internal safety management system.

**Hon. Douglas Lewis:** I'm not sure we addressed the issue of whether the safety audits should be made public. We did address the issue of making the statistics available, and we also felt administrative monetary penalties should be publicized.

**Mr. Peter Julian:** Okay. You didn't clearly say that in the report, that is true, but in your personal opinion, is that not public domain, speaking as a former member of Parliament as well? Do you not

believe it is in the public interest to have that kind of information available to the public?

**Hon. Douglas Lewis:** I'd rather examine that whole issue more thoroughly than give you an off-the-cuff answer. I'm not above giving off-the-cuff answers, but I've kind of learned where I should and where I shouldn't. So I'd rather not jump into that one, Mr. Julian.

One of the other things we mentioned was.... I was in auditing and I got away from it, and I'm now a director of the State Bank of India (Canada). I'm on the audit committee, and I'm dealing with the auditor when he comes in with the annual results.

That's one of the things that struck us. There were complaints from the railway companies about audits where there was no follow-up. Nobody sat down with management and said, "Here are the findings of our audit", let alone addressing the public. The auditors weren't coming back to the railway companies and saying, "Here's where we found the problems". Do you know what I mean?

**Mr. Peter Julian:** That's a valid point.

**Hon. Douglas Lewis:** And I think you'll notice a reference in there that the audit procedures should be brought up to the level of the Auditor General. I think that's what we're driving at.

There is a learning process here. You've got to learn how to audit, and then you've got to learn how to report your audit findings to the people you've audited, so they can then make sure you don't find the same things next year. That's what we're driving at.

**The Chair:** Make it a very short question, please.

**Mr. Peter Julian:** I'll keep it very short.

Concerning the penalties for violations of safety information, particularly with respect to the CEOs, do you believe there should be substantial increases in penalties for corporate executives who do not put safety before other elements in the company?

• (1155)

**Hon. Douglas Lewis:** I think everybody, from the employee up to the top, has to pay attention to the safety systems.

Regarding whether or not you want to go after the CEOs, I happen to think you've probably got enough clout in the publicity if it's done properly. I make no bones about this. You're all politicians here. You know how public opinion is generated, and you know what public opinion can do to the stock market. We see it every day.

We had an example of President's Choice jerking a product yesterday, and you'd better believe that affects their bottom line.

So I think you've got a better chance with the publicity surrounding the administrative monetary penalties than you do with the targeting of one particular individual, because then you've got to prove that the individual should pay it personally. With that approach, there are a lot of problems.

**The Chair:** Mr. Fast.

**Mr. Brian Jean:** Actually, Mr. Chair, if I may have a second, I want to have an opportunity to thank Mr. Lewis, on behalf of the Prime Minister, the Minister of Transport, and of course our government for all your hard work and that of your team members, including Mr. Côté, M. Lacombe, and Mr. Moser. We really do appreciate it.

Safety is very, very important to everyone on this committee and to all members of Parliament, and we do appreciate your time very, very much.

**Hon. Douglas Lewis:** Thank you.

**The Chair:** Mr. Fast.

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

Thank you, to all three of you, for appearing before us today.

As is often the case, I want to correct the statements made by Mr. Julian. I can assure you that the large majority of witnesses who appeared before us on the amendments to the Aeronautics Act strongly supported SMS. The aviation industry has embraced SMS in a way that perhaps the railway system has not. In fact, the only ones who spoke against it were the inspection unions. Even Judge Moshansky grudgingly confirmed that when implemented properly, SMS considerably enhances public safety.

I'd like to refer to page 67 of the report. For me, this was perhaps the most shocking aspect as it relates to SMS.

You make the statement, and I quote:

Railway employees largely had less to say because many told us they were unaware of SMS or had not been trained in its objectives.

I would suggest that the employees' buy-in to SMS is perhaps the most critical component of making sure SMS works. And here you have employees saying they're not aware of it, and if they're aware of it, they don't know what it means; they don't know the details of it. That's perhaps one of the failings within our railway system in Canada, that SMS isn't actually working.

I want to also refer you to a number of other comments that were made, which has to do with the culture of fear that has developed within some of our railway companies. You make the statement, on page 70, and I quote:

With some exceptions, employees recounted a culture based on fear and discipline.

That was with reference to CN.

On page 71, I quote again:

The Panel sees such an over-reliance as a culture where strict adherence to rules is achieved primarily through discipline or a threat of potential discipline. Disciplinary cultures have a tendency to instil fear, and to stifle employee participation and reporting.

To me, that's the critical component of making sure that SMS works. If the front-line employees, who are identifying risks within

the system, aren't buying in and they are afraid of discipline, it's not going to work.

I did notice that your recommendation 18, says, "Transport Canada...and the railway industry must take specific measures to attain an effective safety culture." But you're not specific on how to achieve that. The aviation industry has fully embraced this notion of immunity for employees when they self-report risks. You reference that in your narrative when you referred to Air Transat, but you don't make that part of your recommendation.

Is that something you would consider adding to the recommendations, that there be some kind of immunity process to ensure that employees can get rid of that fear of being disciplined for reporting risks within their sphere of operation?

● (1200)

**Hon. Douglas Lewis:** You covered quite a gamut of issues there.

**Mr. Ed Fast:** I'd like to focus on the immunity part. You barely touched on it.

**Hon. Douglas Lewis:** I'm going to focus on that as well.

Time and time again, witnesses, whether in public or in private, said they didn't know what SMS was. That's why I said in my opening remarks that we're too wrapped up in the theorist at the top who is gung-ho on SMS but has never run a train. We have to get to the front-line person and ask what the risks are and how they would be mitigated.

I said to one group of railway executives, "I know how I would do it. I'd give them a questionnaire with the pay cheque just before Christmas and ask what the five riskiest things are in their part of the operation and how they would fix them." Then I'd say, "You'll get your first pay cheque after Christmas when you give me your answers. I don't want a thesis, but I want to know." And then I'd take those and put them through the system.

It really has to be that basic.

Now, to your whistle-blowing, if I could—

**Mr. Ed Fast:** It's not whistle-blowing. It's referred to as immunity in your report, and immunity has also been made part of the amendments to the Aeronautics Act that are presently before the House at third reading.

**Hon. Douglas Lewis:** We had some issues in public. We had meetings in private, meetings in small groups with local occupational committees, and there was a theme throughout that said we need to have a system for reporting without blame to get at this. That came from employees in both companies and it came from unions. They feel they have to be able to talk about things that happen without facing repercussions, punishment, or blame.

**Mr. Ed Fast:** Is that part of your recommendation, then? Can it be read into what you've stated in recommendation 18?

**Hon. Douglas Lewis:** However we term it, I think there has to be better input from the employees. I'm saying the employees—not the unions—as to how they are doing their job. That's where we've got to get it from. They should be able to talk about these things without worrying about being disciplined for it.

**The Chair:** Mr. Volpe, go ahead.

**Hon. Joseph Volpe:** Thank you very much, Mr. Chair.

Thank you, Mr. Lewis, and your colleagues. I'd like you to feel that at least the official opposition is sufficiently appreciative of your work to be able to offer you thanks. I found it, on a preliminary reading, to be a remarkably non-partisan report, so I thank you for that.

I realize these questions will be generic in nature, and probably cursory from your point of view. Perhaps we'll be a lot more enlightened as we study this, but I'm wondering about a couple of things. It appears to me, at first read, that your report is really calling on Transport Canada to play a much more significant role than it appears to have been playing so far. I don't want others to think this is a condemnation. It's just what I read from your report. I'm wondering if that is what you intended to convey as an impression and whether a couple of other things that come forward should also flow from that.

For example, you've talked about SMS and trying to get a sense of why the employees have not yet bought in. Secondly, you've talked about the railway industry now turning a profit, which it wasn't turning when you were last in Parliament. Thirdly, you made a careful note that, since 1990, just before you left Parliament, there were some 67,000 employees in the business, and just before you started your report there were only 35,000. The railways are actually now turning a profit, or they're at least reporting a profit. By my calculation, just by reducing the staff, it's about \$3 billion annually.

I don't want to make a co-relation, but given that you wanted buy-in by employees in order to secure the safety and the efficient running of these railroads, do you see a role for Transport Canada to assume the responsibilities, not only for inspection but also for the issuance of the certification of—I forget the exact title you put down, but the appropriateness of the operation, i.e. is the thing ready to roll, and to roll safely? Should that be a role assumed by Transport Canada, or is it something we need to demand from the industry?

• (1205)

**Hon. Douglas Lewis:** I think what the panel was driving at was that Transport Canada has to play a more significant role, and they have to pay more attention to how they play the role. I think that's key.

Let's take the whole issue of the rules and how they were made.

There's a lot of grief surrounding how the rules are made. Remember that Transport Canada has the final hammer. Whether it's a rule or a regulation, the minister has to approve it. If it's a regulation, the government has to approve it, but the minister has to approve it. Transport Canada has the hammer, but as we all know, having the hammer and using it effectively are two different things. If two parties are negotiating and they can't get along, then negotiations break down, but if we're trying to prepare a rule that has to develop railway safety, the important thing for Transport Canada to do at the start is to say they want a rule that attacks the following problems, and here's what they're expecting from the rule. They have to give them some parameters at the start, and then the person in Transport Canada who's dealing with the railway companies has to have the clout to be able to go back to Transport Canada and get some definitive answers on what will fly and what won't fly. Those are the things, Mr. Volpe, that we're missing.

Now, you made reference to the profit. The profits are going up and the number of employees is going down. Since 1997 the number has gone from 46,000 to 34,000, but by the same token, the average wage per employee has gone from \$54,000 to \$73,000, so I think that's a factor that has to be looked at too.

The last point, briefly, is that the railway operating certificate has to be approved by Transport Canada. It only works if they come in and take a look at it. In this day and age, it's usually a short-line operation. It was different in 2005, when CN took over BC Rail, and in that case maybe there should have been a little better look at overall safety, but it's got to be Transport Canada.

**The Chair:** Thank you.

Go ahead, Mr. Carrier.

[*Translation*]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Good afternoon, ladies, gentlemen and Mr. Lewis. I too feel that you have provided us with a fine piece of work. We can learn a lot from this report.

We in the Bloc Québécois supported the establishment of the safety management system for air transportation after having been persuaded that it was an additional safety system that would in no way replace the inspections conducted by the department. A system in place in each company would have to mean better and more consistent audits, over and above the inspections conducted by the department.

However, your observations do little to reassure me about railways. You said that it has been in place for seven years. On page 183, you write: "There is a need for Transport Canada to develop the capacity to provide effective oversight of SMS while maintaining appropriate inspection functions." You seem to be pointing out that we need additional resources to oversee the implementation of safety management systems. After all, you do not push a button and get perfectly operating systems in place. You are confirming that it is Transport Canada that should be making sure they work.

Also on page 183, we read the following: "Finally, lack of resources, both financial and human, to carry out the Transport Canada rail safety mandate was a matter of widespread concern within the department and elsewhere." From this, we gather that the department itself is aware that it lacks resources. To me, the fact that a department does not have the resources to fulfill its mandate is quite serious. I find it troubling. Everyone on the committee, even government members, are well aware of the importance of railway safety. But the department responsible for it lacks resources. That is the root of the problem.

Could you tell us precisely what you mean? Has putting the safety management system in place caused more administrative work for the department? Has it resulted in fewer resources for inspection because people were not specifically assigned to oversee the safety management systems? Perhaps our situation is worse after the SMS were put in place because we do not have enough resources. Instead of doing on-site inspections, people audit management systems that are not even completely supervised, according to what you are telling us.

Could I ask you to expand on this or to correct any erroneous comments I may have made?

•(1210)

[English]

**Hon. Douglas Lewis:** Thanks very much, Mr. Carrier.

I think we were driving at not only additional resources but a different way of deploying resources. In other words, there are different skill sets that are required to implement an SMS system. You still have to have the inspector function, but you have to have people who have the skills to implement an SMS system and audit it appropriately. That's where, in my personal opinion, more emphasis could have been given: how are we going to start doing this auditing as opposed to inspecting? I don't know what discussions took place with the Auditor General, but I would have thought that this would have been the first place to start, because the Auditor General carries out government audits and knows what's involved. I'm not sure this happened. They were given as resources, as I remember, two inspectors per region to do the SMS monitoring.

The question is, and I think it's fair to say, we found this difference as we went from region to region. In discussing it with the inspectors we met, without being specific about which region did better than others or seemed to be more in tune, we got a different impression of SMS implementation from region to region. I think that's what we have to address through resources for Transport Canada.

•(1215)

**The Chair:** Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair. Thank you to our witnesses for appearing today, and for your report.

There is an awful lot of detail, several hundred pages, in this report, and we've seen in the line of questioning so far that everybody is seizing on a number of the small details. It's easy to get lost in the details, but I want to try to crystallize this report, if I possibly can, to what's really at the heart of these couple of hundred pages or so.

Is the achievement of safety management systems, at stage five in your continuum, at the heart of the fullness of safety for our rail system in Canada? Is that what this all really boils down to at the end of it, getting to stage five on the continuum with respect to SMS? Or is there more than that? I'm trying to get to the heart of it.

**Hon. Douglas Lewis:** Yes, I think I'd refer you to pages 69 and 70.

In our opinion, VIA Rail has the best safety culture, and that ties in with implementing SMS. They're all over it. CP has made great strides and they're working towards it; they have embraced the safety culture of the SMS system. We don't feel that CN has because they're too wrapped up in the rule-making.

**Mr. Jeff Watson:** Which brings me to the next thing. Sticking with the measurement, using that continuum from stage one to five, on page 73 you say this continuum can be applied to a company and the regulator.

So I'm going to ask you this question. With Transport Canada and the government being the regulator, where are they at currently on the continuum, stages one through five, and where is industry on that

same continuum, in your opinion? That will help us evaluate progress to date and where we need to go.

Your unvarnished assessment of both would be appreciated.

**Hon. Douglas Lewis:** We reviewed a lot of potential questions beforehand. I didn't think of that one.

**Mr. Jeff Watson:** But it's really at the heart of where we want to go, in terms of progress we've made. If stage five for both the industry and the regulator is where we need to get, in order to have the safest rail system possible in Canada, then the proper evaluation of where both the industry and where the regulator are in that respect will tell us how far we've come and how far we need to go.

**Hon. Douglas Lewis:** All right, let me apply myself to the companies, and this is off the cuff. I would say that VIA is probably in four or five, and they would state that they're still looking for ways to improve it.

I think CP is in the mid-range. They embrace it, but as Faye Ackermans says, it's a fragile thing. You have to be moving along and bringing everybody under the tent.

CP is in a stage one or two—

**Mr. Jeff Watson:** CN, you mean.

**Hon. Douglas Lewis:** CN, thank you; that's where I would place them.

Now, the Transport Canada concept is a really interesting question. I can tell you that that depends on the region, in my opinion. There's a head office look at it and the regions. There's one region where we were very impressed with the embracing of it, the concept, and what they were doing. There were other regions where—

**Mr. Jeff Watson:** Which region was that?

•(1220)

**Hon. Douglas Lewis:** The Atlantic region, in our opinion, had the best “on the ground in the region” approach and sense of safety cultures and safety management systems.

**Mr. Jeff Watson:** For the benefit of the committee at some point, in a memo or something later on, can you write out the regions for us from best to worst as far as the regulator goes in that regard? I think that would be very instructive for the government in terms of which regions need to improve.

**Hon. Douglas Lewis:** That's a reasonably subjective question, but a good one.

**Mr. Jeff Watson:** Well, your opinion is better than none.

**Hon. Douglas Lewis:** I'll take counsel and get back to you.

**Mr. Jeff Watson:** The last thing I want to get in here, while I have a brief window on this, is that there are 56 recommendations. That's obviously a lot of recommendations.

We've identified the heart, needing to get to stage five, both for the industry and for the regulator.

Looking at the priorities, every government has to make priorities, and 56 recommendations are a lot. Which are the most significant for the government to focus on, structurally speaking, to get both the industry and the regulator to that stage five? They may not necessarily be the lowest-hanging fruit, but if you were to distill this down to the most significant three or four recommendations that will really push this thing forward, what are those?

**Hon. Douglas Lewis:** Maybe I can give you four or five, but not rank them.

I think we have to have a better collection of information. Transport Canada has to have the ability to collect the information, analyze it, and disseminate it. It has to start with the information.

I think there has to be a bigger emphasis on implementation of safety management systems in both Transport Canada and the companies. I'd put that fatigue management issue in the five. Straightening out the ways in which rules are developed should be made into a regulation, and everybody should work at it.

Lastly—and maybe we should start with this one—both Transport Canada and the industry have to make a better effort to communicate and be transparent and work together.

**Mr. Jeff Watson:** Thank you.

**The Chair:** Mr. Maloney.

**Mr. John Maloney (Welland, Lib.):** Mr. Lewis, you had a recommendation or a suggestion that municipalities and developers should consult with Transport Canada regarding new developments. I envisage perhaps two situations. Say a developer is putting in a subdivision two miles down the road, and the density of secondary roads traffic will increase as they lead to primary transportation arterial roads. How far away do we have to consider this? What is reasonable proximity to a rail line, or is it just subjective? Or do you have to consider every situation on its own? Should Transport Canada have to sign off on these developments? What do we do with existing development, whether it's residential, commercial, or industrial? Should we—we being the Government of Canada—be funding initiatives to improve hazardous situations with current development? Is it sort of a double-edged sword? Should we be providing not only consultation on the new development but assistance to a municipality, such as at crossings? Crossings are very expensive to put up, with the signals, etc. That's a concern, as well as new development.

**Hon. Douglas Lewis:** Thanks, Mr. Maloney. That comes from our observations of proximity issues in my comment about jurisdiction. The safest crossing is a grade separation. That may be expensive, but municipalities say to developers that they want street lights, sewers, and water. Why shouldn't they be able to say they want them to provide money for a grade separation on the other side of the railway?

Our example in the report is from Wetaskiwin. We took a rail inspection car from Calgary to Edmonton. There's a whole lot of land in Alberta, and when you get to Wetaskiwin you see what's happened. You have the town on one side of the tracks and you have the subdivision and the school on the other. It's a recipe for disaster. I realize grade separations are expensive, but a municipality wanting development approves the subdivision on the other side, gets the sewers and water, and nobody says they should take all their roads

and funnel them into one crossing where there's going to be a grade separation. They expect a contribution for that too. If they don't get it, the council down the road is the one that deals with the problems. I think there should be more emphasis on doing that when we have lots of land.

The counterpart in the city of Montreal was where I think a golf course owned by one of the railway companies has nine holes in one municipality and nine holes in the other. One is saying that nine holes are going to be residential development and the other is saying they don't want those nine holes developed. How do you solve these problems? How do we prevent the residential community being built, and then the next thing you know, at the first council meeting after people have lived there a while, they're complaining to council.

I think there has to be better cooperation between the municipalities and the federal government. I wouldn't give the railways the hammer—and I don't think you can do it constitutionally—but we asked for something like Ontario's buffer requirement. If there is a development within 300 metres of a railway line, there has to be notice to the railway, so it can apply to the various hearings, be a party to them, and put their point of view in front of the politicians who are going to make the final decision.

• (1225)

**Mr. John Maloney:** What about areas that have been built up for years that have hazardous conditions? Should we be stepping up to the plate to assist municipalities to mitigate those hazards?

**Hon. Douglas Lewis:** That could be a very expensive proposition for the federal government. I think you'll notice in the report that we stayed away from suggesting we should fund railway crossing improvements for provincial railways, for that very reason. The provinces have control over municipal planning. Should the federal taxpayer be making monetary solutions for provinces that have created their own problems? I'm not sure.

**Mr. John Maloney:** Thank you.

**The Chair:** Mr. Shipley.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chairman.

Like others, I also want to congratulate and thank the panel for their work. It started, I think, in February and ended in November. Coming up with a very thorough report with 56 recommendations is very commendable, so I want to thank you and your whole panel for the work you've done.

I come from southwestern Ontario. I don't have a large city through which trains go, but I have a large rural area and a lot of small towns through which main lines run. Over the years we've had a number of accidents on the rail lines.

In rural areas we have professional emergency people. Most of them are volunteers. I follow up on Mr. Maloney's concern about municipalities and those sorts of things in working around jurisdictional issues with CN and CP in our small towns. Municipalities don't always have the option. A town has maybe been there for generations with a rail line through it; it once had a train station and now it doesn't. So a number of issues come with it.

I'd just lay out some of the concerns that happen in the rural areas. The concerns in terms of rail safety aren't just for large towns. I can tell you that safety in terms of the public is likely about as paramount in terms of rail safety as it is on road safety. There isn't anyone in the rural areas who doesn't cross the railway, and our railways out in our rural areas come with a variety of safety protections.

In terms of rail safety, and getting to the SMS, on page 67—and I know it's been brought up before, and you've mentioned it—there is a submission on it. It says, “While much progress has been made, most employees have only a cursory awareness of [the] existence [of SMS] and what it actually means to them.”

It also says that, generally speaking, there's a misunderstanding about the intent of the SMS by stakeholders, who “were under the impression that SMS would replace regulations, but the panel understands that SMS was never intended to be deregulation or industry self-regulation”.

In terms of the awareness, it always seems to be that regardless of the issue.... I'll use veterans as an example. We have great programs that we're trying to help veterans with. We've put it in magazines. Veterans Affairs put it out, yet the same issue keeps coming back: how do we make people aware when you have something that is out there?

In this particular case, we have employees who actually work with it every day and seem to be lacking the awareness of it. I'm wondering if you could address it. I'm hopeful that it isn't all about discipline, but maybe it is that fear. How can we work with them? What are some of the ways we can actually work with the employees through the companies to build their awareness?

● (1230)

**Hon. Douglas Lewis:** I think we address that in the chapter on safety management systems. We feel they've got to go right back to basics and talk to the employees who are involved in the risk and have an interest in the mitigation of the risk.

That's what safety management systems are about, but it doesn't seem as though that happened, or that when they did it, the companies had specific meetings at which they sat down and said, “We're going to demystify SMS for you. We're going to tell you it's about making sure that you go home at night.” That's what it's about.

**Mr. Bev Shipley:** I read that, but I think we have to go further, because you also talked about the issue of a buy-in. We can have all the meetings we want and that can happen, but how do we really encourage the buy-in? I think you suggest that there's a buy-in by some but not by all. I think you said that CP basically has a buy-in and that maybe CN doesn't have that same enthusiasm for a buy-in. If you don't have the buy-in at the top, you obviously won't get the buy-in much from the bottom, only because they haven't been encouraged to.

**Hon. Douglas Lewis:** All the railway companies are required to have an occupational health and safety committee. It seems to me that's where you could start with a discussion of SMS, risk management, and mitigation. If we had a standard approach to it in a company, region by region—and I'm talking about the two major companies right now—they could say, “Okay, we want every local occupational health and safety committee to have a discussion on

safety management. Here's the brochure, have a meeting, and find some ways to publicize it among your employees.”

I don't think it's mentioned in the report, but CP does a survey of its employees every two years and asks for their feelings on the company's attitude towards safety. They've seen progress in that. I think that has to be done by the railway companies as well. But it all boils down to making it a priority to explain it to every employee on the job.

**Mr. Bev Shipley:** You had a good suggestion on the pay cheques.

**The Chair:** Sorry, Mr. Shipley.

The Liberal side has five minutes, and I think Mr. Bell and Mr. Volpe are going to split that. We'll go back to Mr. Jean and then open it up for some short questions.

You have five minutes between you.

● (1235)

**Hon. Joseph Volpe:** On the issue of the reduction in staffing in the railway companies, it's been about 48% over a 15-year period. I'm going to separate the kinds of discussions Mr. Shipley has raised—or even Mr. Maloney—from the derailment issues. Rather than talk about the personal injury issues associated with railway crossings—there have been 43,000 of them around the country, as you've identified—I'll talk about the derailments.

You focused in many of your answers on the issue of staff not only understanding but being prepared to integrate SMS systems and implement them. When you have a 48% decrease in staffing and curtail new hiring, you're going to run into fatigue, which you've also noticed. But as you bring in new people, do you get the same kind of commitment or ability to insure yourself against problems that will lead to derailments that you would with a greater number of people? How accurate might that be?

Given that you've had these huge reductions in staff, is this an opportunity for Transport Canada to assume full responsibility for not only inspections but also certification—in other words, be responsible for safety through its own oversight system?

**Hon. Douglas Lewis:** I would argue that when you bring in new people, which the railway companies are doing now because of the demographics, you have a better chance to train them and see that they are skilled to operate what they're operating today, rather than taking an older workforce and retraining it. To me this is an opportunity to train people to run longer trains and use the advances in braking techniques and other things to the best of their ability. I don't know if it's a question of how much the workforce has been reduced, rather than an opportunity to have a more professional and skilled workforce on the job.

**The Chair:** Mr. Bell.

**Mr. Don Bell:** Thank you.

I have a couple of questions that I'll throw at you and you can answer.

One is that in your presentation today you made the comment:

In our opinion, the regulator is doing a credible job with the resources provided, but has not been given sufficient resources to do the job to advance railway safety.

So they're doing well with what they have, but they don't have enough. You said you're suggesting that the Minister of Finance—and I presume by that you mean the cabinet as well—should balance the importance of the rail industry to the Canadian economy, as well as government revenues, direct and indirect, with the needs of Transport Canada to do the job. I'd ask you to comment on that.

I also want to ask you, while you're at it and before I run out of time—

**The Chair:** It's getting close.

**Mr. Don Bell:** I know. I have my stopwatch running.

You talked about the areas, and I'm curious about British Columbia, because that's obviously where I'm from. To what degree do you think the BC Rail takeover by CN affected their performance in British Columbia with respect to derailments?

**Hon. Douglas Lewis:** On that last question, this is a personal observation.

I was amazed when I read the TSB report on Lillooet, I think it was, or Cheakamus, one of the two. Which was the first?

**A voice:** Cheakamus was first.

**Hon. Douglas Lewis:** Yes.

I was amazed that nobody picked up on the fact that from August to October there were about four big derailments, and that begs the question. You will note that we suggest a rail operating certificate. BC Rail's sale to CN was not just a transfer of cars; it was a transfer of management, and how do you run long trains through those mountains?

That's why we took the trip. We went right up to Lillooet on a high-railer and saw for ourselves. Boy, it's no problem for a lawyer from Orillia to get the idea of how difficult it would be to run a train through that terrain. We just weren't sure that everybody had applied themselves to those difficulties when it came to the takeover of BC Rail.

• (1240)

**The Chair:** Mr. Jean.

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

Again, I appreciate your coming today.

On page 204, you indicate, speaking of British Columbia, that actually the province inspects, audits, and enforces in relation to the Railway Safety Act. Indeed, except for Saskatchewan, that's the only province where Transport Canada is not really involved in the inspection or enforcement.

Is that correct, sir?

**Hon. Douglas Lewis:** They do it under a memorandum of understanding with Transport Canada.

**Mr. Brian Jean:** All right.

When I heard “skyrocket” from my friend across the floor in the NDP and that statistically things were going up tremendously, we note on page 12 that in 2006, the number of main-track derailments was about 11.3%, but even though there was an upwards trend from 1997 to 2005 in accidents overall, in 2006 we actually saw a drop of

approximately 8% overall, of all incidents, even though main-track derailments were up.

It appeared to me that there were about 70 or 80 main-track derailments across Canada per year—somewhere between 70 and 100. Is that correct? I just didn't see the numbers.

**Hon. Douglas Lewis:** If I may suggest, Mr. Jean, the chart on page 12 is not as instructive as the chart on page 14, which separates them. The figures on page 12, total reported rail accidents, are helped by the fact that the railway crossing accidents had such a dramatic drop. So I think when you drill down, as we do on page 14, you get a better picture.

**Mr. Brian Jean:** Absolutely. My actual point, though, is that we're talking about main-track derailments.

I was a statistician as well as a lawyer in a previous life. How do you save a drowning statistician? You take your foot off his head. I know that's how people feel about politicians and lawyers as well, but my point is that overall we're talking about a situation where statistically we're within the margin of error, plus or minus, per year on main-track derailments. We're talking of a single-digit increase or decrease, in essence, overall. That's my point.

But I'd like to get on to some really substantive questions.

You said one thing that alarmed me, that 12% of accidents happen while dangerous goods are moving. Is that correct, that 88% are happening while they're standing still, while they're not moving? So they're either unloading—

**Hon. Douglas Lewis:** Or they're being loaded, yes.

**Mr. Brian Jean:** That's a serious issue. Is that dealt with in your report in more detail? I didn't see that or ways that we can solve that.

**Hon. Douglas Lewis:** We also point out that at the same time they're going down.

We were quite impressed with anybody handling a dangerous good who came before the committee and the efforts they have put into it. TransCARE is a system or a culture that has been developed in Canada and is taken around the world. Our chemical producers have been the ones that brought that kind of improvement about.

**Mr. Brian Jean:** Indeed, I was concerned about that. I didn't recognize that before.

I have a quick question. I'm limited on my time and our chair keeps us within boundaries.

Would it be helpful if we had an international standard of reporting incidents? I did an analysis on U.S. accidents, even on Australia's accidents. It's very difficult to compare apples to apples because they don't do the same reporting. Would it be helpful to have an international standard like we do in air traffic?

**Hon. Douglas Lewis:** In my opinion, yes. How fast could we achieve it? That would be difficult.

• (1245)

**Mr. Brian Jean:** Finally, I'm not sure if you had an opportunity to—

**Hon. Douglas Lewis:** I've just been reminded, and I should have realized it, but the beauty of air travel is that air is air. Our problem in this country is in the geography as you go from one part of the country to another. Geography affects railway travel much more than it would air.

**Mr. Brian Jean:** Indeed, I think that was the point of my friend.

I asked Justice Moshansky this question. Would the accident at Dryden have happened if an effective safety management system would have been in place at that time? He said no, it likely would not have happened, because if there is ice on a plane wing, it would be impossible, no matter how many inspectors you had—even if you had an inspector for every aircraft—to see that. The possibility was very minor. Indeed, he endorsed the SMS system—an effective SMS system. I did want to make that point.

The final question I have is on Air Transat. You made mention that Air Transat was an example you used for the SMS system. I would like you to tell us why you used Air Transat and how long, to your knowledge, they've been using the safety management system. This government is trying to put that into the aeronautics industry, but it is currently being blocked, and it has been for months, by the NDP.

**Hon. Douglas Lewis:** We specifically used Air Transat because of an experience Tim had. I wasn't at that particular interview, but I think it would be instructive.

**Mr. Tim Meisner (Executive Director, Railway Safety Act Review Secretariat, Department of Transport):** I wouldn't say it was an individual experience, but from the department on the aviation side as they put in the SMS system. Air Transat was one of the companies that was really positive about it and saw positive results. We encouraged the panel members to talk to them to see what the results were from a company's perspective and to see if it could be applied to the railway industry. I think the response they had from Air Transat was not only from a safety perspective, but it's also been profitable for them.

**Mr. Brian Jean:** After that, it was their conclusion as well that it is a safe system and it is working for Air Transat.

**Mr. Tim Meisner:** I would say that was the panel's conclusion, yes.

**The Chair:** Thank you.

I'm going to allow 30 seconds for each group.

Mr. Bell, very briefly.

**Mr. Don Bell:** Thank you, Mr. Chair.

I would go back to the first question I asked you in the last round. It was the one about the resources from the government to Transport Canada to, in effect, properly do the job. As a former minister, you'd appreciate both sides, and I'd appreciate your comments. It appears that Transport Canada is not being funded adequately in terms of the balance, recognizing the importance of the railway system to the Canadian economy.

**Hon. Douglas Lewis:** I think the effort has to be made with the officials of the Ministry of Finance. It's not the ministry so much; it's the officials. We have to get it through their heads that if we want to improve the system, and if the Canadian railway system is as

important to the Canadian economy as we know it is, you have to fund it as it grows. The funding to monitor it has to go hand in hand.

**The Chair:** Mr. Julian, for 30 seconds.

**Mr. Peter Julian:** Thank you, Mr. Chair.

Just for the record, Justice Moshansky opposes Bill C-7, as do millions of other Canadians, which is why the government isn't implementing it.

There are many Canadians who came before your inquiry and said that SMS was the wrong approach. I'm wondering why their views aren't reflected in the report.

**Hon. Douglas Lewis:** I don't remember that many Canadians substantiated that, but I do note that Australia is bringing in national railway safety laws, and they make specific reference to the development and contents of safety management systems, to strengthened audit and enforcement powers.

**Mr. Peter Julian:** That's not my question. My question is why the views of those Canadians who feel that SMS is the wrong approach are not reflected in the report.

**Hon. Douglas Lewis:** To the best of our knowledge, there were not any Canadians who came to our attention and made public comments to that effect. I'd be pleased to take it up with you, though, to give you the specifics.

**The Chair:** Mr. Fast, 30 seconds.

**Mr. Ed Fast:** Just for the record, during our aviation discussions on SMS, it was very clear on the record that reporting increased by 400% to 500% where SMS had been properly implemented and where there was immunity.

My question, however, has to do with the railway operating certificate. I'm curious. You've stated that current operators, the ones that are already operating, would get their rail operating certificate almost as a right, although it could be withdrawn if there were reasons to do so.

Given the fact that most of the problems we've discussed about rail safety involved the current operations of railways, why would you have this kind of grandfathering?

• (1250)

**Hon. Douglas Lewis:** Why would we have it grandfathered?

**Mr. Ed Fast:** Why would they receive their certificates as a right?

**Hon. Douglas Lewis:** I'm sorry, I...

**Mr. Ed Fast:** Well, recommendation 9 talks about a railway having to get a railway operating certificate, but you say existing companies would automatically be issued the ROC. I don't understand why they get it automatically, rather than having to comply first and then receive their certificate.

**Hon. Douglas Lewis:** Personally, I'm just not convinced that the time and effort that would have to go into an issuance of a railway operating certificate to every short-line railway, plus the two larger ones, would be a productive use of Transport Canada's resources.



**The Chair:** Thank you very much for appearing before us today. I think this committee has a commitment to what your report is titled, and that's a commitment to railway safety. I'm sure there will be other questions. We appreciate your time today, and thank you.

While everybody is moving around, just for the committee, I know at the end of the last meeting we talked a little bit about where we would go after the break. Obviously, I think we want to continue with this. I have a couple of suggestions. I'll put them out there, and then we can have a brief discussion as to where we want to go.

I would think at the first meeting back after the break we would want Transport Canada officials here. I would think perhaps at the second meeting we would want to deal with the rail companies. I had a third meeting proposed at which we would perhaps deal with the labour side of the issue.

So I put that out there. If you want to have a lot of discussion, we can, but if not, then I can certainly advise Maxime where we're going.

Mr. Julian.

**Mr. Peter Julian:** Thank you, Mr. Chair.

So you're proposing for Tuesday, April 8, that it would be—

**The Chair:** April 1.

**Mr. Peter Julian:** No, sorry, the third meeting would be with representatives of railway workers.

**The Chair:** Yes, we would certainly send out a feeler to make sure, but I'm thinking at least those three groups should be brought back to our committee.

**Mr. Peter Julian:** Absolutely. I'll get in touch with Mr. Masse's office. We'll certainly be submitting a list of proposed witnesses.

**The Chair:** Okay. Is everybody comfortable with that?

Mr. Jean.

**Mr. Brian Jean:** Mr. Chair, just after comments made by Mr. Julian, I'm wondering if we have unanimous consent to ask the government to bring back Bill C-7 and to move it forward at all stages through the House.

**An hon. member:** Excellent idea.

**Mr. Brian Jean:** You seemed to indicate that it was the government that was holding it back. So is it indeed the position of the NDP that you're prepared to stop filibustering—

**An hon. member:** It was your hoist motion.

**Mr. Brian Jean:** I think it might be a matter of discussion—

**An hon. member:** It was your personal hoist motion—

**The Chair:** With that, I will adjourn the meeting. Thank you.

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